



Staff Report Item 12

TO: East Bay Community Energy Board of Directors

FROM: Jason Bartlett, Senior Finance Manager

SUBJECT: New Revolving Credit Agreement (Action Item)

DATE: September 21, 2022

Recommendation

Adopt a Resolution authorizing the Chief Executive Officer to finalize and execute a Revolving Credit Agreement with Union Bank.

Background and Discussion

Currently EBCE maintains an \$80MM credit facility with Barclays Bank, PLC. This facility was entered into agreement by Board approval on March 15, 2018 for \$50MM.

A First Amendment to this facility was approved in the July 2019 Board meeting and was entered into on August 1, 2019. This Amendment lowered interest rates, reduced required reserve holdings, and established \$30MM of the facility to be allowed for use with letters of credit (LOCs).

A Second Amendment was approved in the December 2019 Board meeting and was entered into on January 3, 2020. This Amendment increased the capacity of the facility to a maximum amount of \$80MM with up to \$60MM available for cash draws and up to \$35MM to be available for LOCs.

The cash portion of this facility is set to expire on December 19, 2022 and the LOC portion expires on July 31, 2024.

Barclays has opted not to renew any credit exposure to CCAs in light of Western Energy bankruptcy in 2021, where they were Western's facility underwriter. As such Barclays will not renew or extend the current facility. Because of Barclays position, and the

approaching cash expiration date, Staff is seeking to put a new credit facility in place to cover the operational need a facility provides.

On May 6, 2022, EBCE issued a request for proposals (RFP) to provide revolving credit agreement services, with proposals due June 3, 2022. Staff initially conducted uniform interviews with all responding proposers. Based upon interview scoring, Staff proceeded to have several conversations negotiating proposed terms with the two highest scoring proposers until one was selected. Considerations beyond rates and terms used in scoring were Environmental and Social Governance (ESG) goals, vetting of references, adherence to RFP details, location of operations, and exposure to brown power industries. Through this process EBCE Staff has selected MUFG Union Bank as the proposer that has delivered the most favorable terms with the highest rating in the additional considerations and scoring process.

Staff is finalizing a three-year agreement sized to \$200MM, which can be used as either LOCs or cash. Staff does not expect the need to utilize the full amount of the facility, but considering the current rising cost environment, geo-political influences on costs, and the high volatility we are seeing in market prices, having a large enough facility in place to cover short-term working capital needs is a relatively low cost means of maintaining operating liquidity without using reserves. Keeping reserves steady and growing while maintaining large enough insurance coverage for working capital is viewed favorably with credit rating agencies and counterparties that extend operating credit.

The term rates associated with the agreement are as follows, and examples are provided in the Fiscal Impact section of this memorandum:

- The term rate for the bank to hold the agreement available to us is the Undrawn Fee and is 0.25% of any undrawn or unused balance
- The term rate for LOC issuances is the Applicable Margin of 1.40%
- The term rate for cash borrowings is the Applicable Margin plus the Secured Overnight Financing Rate (SOFR), which is 2.28% as of September 9, 2022.
- A default from EBCE results in 1.50% being added onto both the Undrawn Fee and the Applicable Margin and an additional 2.0% on to the SOFR.
- The terms also indicate increases in both the Undrawn Fee and Applicable Margin for any downgrade to EBCE's S&P "A" rating.
- There is no reserve requirement to the facility.

While the terms stated above are negotiated as final, there are some additional aspects of the agreement still under finalization. These aspects are not material to the financial terms, but are essential to execution of the Agreement, facility maintenance, and

clarifications on definitions. Although very close to finalization, Staff will require authority to finalize these remaining details and execute.

Fiscal Impact

Terms and conditions of the proposed facility are provided in the attached Term Sheet and Draft Credit Agreement. Additionally, the following good faith estimates have been provided by PFM Financial Advisors LLC in accordance with California Government Code Section 5852.1, requiring such presentation in a meeting open to the public.

- A. Interest cost per annum:
 - a. Undrawn fee: 0.25% for undrawn or unissued amounts of the facility
 - b. LOCs: 1.40% for issued LOCs (without draws made by the LOC holder)
 - c. Cash Draws: SOFR + 1.40% for cash draws and LOC draws not reimbursed on the same day
- B. Finance charges to third parties: \$125,000 for legal, consulting, and upfront fees
- C. Proceeds: Maximum gross proceeds are \$200,000,000 for a fully utilized facility. Because this is a revolving credit facility, this amount may be lower and fluctuate at any time up to the maximum of \$200,000,000.
- D. Total Interest Payment amount with following assumptions: \$22,080,000
 - a. Maximum draw of \$200,000,000
 - b. Full facility term length of 3 years
 - c. SOFR at 9/8/2022 rate of 2.28%
 - d. Applicable Margin rates for EBCE maintaining "A" rating
- E. If no cash draws are made and no LOCs are issued, the maximum interest payments for the full term of the facility over three years would be \$1,500,000. This is \$210,000 less than our current facility with Barclays
- F. If as much as \$50MM is issued as LOCs, and no cash is drawn, then the total maximum interest payment for the full term of the facility over three years would be \$3,225,000.

Committee Recommendation

This has been presented at the Finance, Administrative, and Procurement Committee as an informational item on September 16, 2022.

Attachments

- A. Current draft of Revolving Credit Agreement
- B. Current draft of Fee Agreement
- C. Resolution authorizing the CEO to finalize and execute the Revolving Credit Agreement

REVOLVING CREDIT AGREEMENT

Dated as of September [], 2022

by and between

EAST BAY COMMUNITY ENERGY AUTHORITY,
as Borrower

and

MUFG UNION BANK, N.A.,
as Lender

TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE 1	DEFINITIONS	1
Section 1.1.	Definitions.....	1
Section 1.2.	Terms Generally.....	17
Section 1.3.	Accounting Terms; GAAP.....	17
Section 1.4.	Rates.....	18
ARTICLE 2	THE CREDITS	18
Section 2.1.	Commitments.....	18
Section 2.2.	Loans and Borrowings	18
Section 2.3.	Requests for Revolving Borrowings	18
Section 2.4.	Interest Elections.....	19
Section 2.5.	Termination and Reduction of Commitment	19
Section 2.6.	Repayment of Loans; Evidence of Debt	19
Section 2.7.	Prepayment of Loans	20
Section 2.8.	Fees	20
Section 2.9.	Interest.....	20
Section 2.10.	Increased Costs	21
Section 2.11.	Payments Free of Taxes	22
Section 2.12.	Payments Generally	23
Section 2.13.	Mitigation Obligation.....	23
Section 2.14.	Extension of Maturity Date.....	24
Section 2.15.	Pledge; Security of Obligations	24
Section 2.16.	Term Loan.....	24
Section 2.17.	Letters of Credit	25
Section 2.18.	Inability to Determine Rates; Illegality.....	28
Section 2.19.	Benchmark Replacement Setting.....	29
Section 2.20.	Compensation for Losses	30
ARTICLE 3	CONDITIONS.....	31
Section 3.1.	Conditions Precedent to Effectiveness.....	31
Section 3.2.	Conditions Precedent to each Credit Event	32
ARTICLE 4	REPRESENTATIONS AND WARRANTIES.....	33
Section 4.1.	Organization, Powers, Etc.....	33
Section 4.2.	Authorization, Absence of Conflicts, Etc	33
Section 4.3.	Binding Obligations	33
Section 4.4.	Governmental Consent or Approval	33
Section 4.5.	Absence of Material Litigation	33
Section 4.6.	Financial Condition.....	34
Section 4.7.	Incorporation of Representations and Warranties.....	34

Section 4.8.	Accuracy and Completeness of Information.....	34
Section 4.9.	No Default.....	34
Section 4.10.	No Proposed Legal Changes.....	35
Section 4.11.	Compliance with Laws, Etc.....	35
Section 4.12.	Environmental Matters.....	35
Section 4.13.	Regulation U.....	35
Section 4.14.	Liens.....	35
Section 4.15.	Sovereign Immunity.....	35
Section 4.16.	Usury.....	35
Section 4.17.	Insurance.....	35
Section 4.18.	ERISA.....	36
Section 4.19.	Sanctions Concerns and Anti-Corruption Laws.....	36
Section 4.20.	Debt of Borrower.....	36
ARTICLE 5	COVENANTS.....	36
Section 5.1.	Affirmative Covenants.....	36
Section 5.2.	Negative Covenants.....	41
ARTICLE 6	DEFAULTS.....	44
Section 6.1.	Events of Default and Remedies.....	44
Section 6.2.	Remedies.....	45
ARTICLE 7	MISCELLANEOUS.....	46
Section 7.1.	Amendments, Waivers, Etc.....	46
Section 7.2.	Notices.....	46
Section 7.3.	Survival of Covenants; Successors and Assigns.....	47
Section 7.4.	Liability of Lender; Indemnification.....	48
Section 7.5.	Expenses.....	49
Section 7.6.	No Waiver; Conflict.....	49
Section 7.7.	Modification, Amendment Waiver, Etc.....	49
Section 7.8.	Dealings.....	49
Section 7.9.	Severability.....	49
Section 7.10.	Counterparts; Integration; Effectiveness; Electronic Execution.....	50
Section 7.11.	Table of Contents; Headings.....	51
Section 7.12.	Entire Agreement.....	51
Section 7.13.	Governing Law Waiver of Jury Trial.....	51
Section 7.14.	USA PATRIOT Act.....	52
Section 7.15.	Assignment to Federal Reserve Bank.....	52
Section 7.16.	Acknowledgement Regarding Any Supported QFCs.....	52
Section 7.17.	Arm's Length Transaction.....	53

EXHIBITS

- Exhibit A — Form of Compliance Certificate
- Exhibit B — Form of Borrowing Request
- Exhibit C — Form of Promissory Note
- Exhibit D — Account Control Agreement
- Exhibit E — Intercreditor Agreement
- Exhibit F — Security Agreement

REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT, dated as of September [], 2022 (together with all amendments and supplements hereafter, this “*Agreement*”) is by and between EAST BAY COMMUNITY ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (together with its successors and assigns, “*Borrower*” or “*EBCEA*”), and MUFUG UNION BANK, N.A. (together with its successors and permitted assigns, the “*Lender*”).

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

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

ARTICLE 1

DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

“*Account Control Agreement*” means the Account Control Agreement, attached hereto as Exhibit D, as amended and supplemented in accordance with the terms hereof, by and among (i) River City Bank, as account bank, (ii) EBCEA and (iii) River City Bank, in its capacity as collateral agent.

“*Act*” means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq.

“*Affiliate*” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

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

“*Amortization End Date*” means the third (3rd) anniversary of the Maturity Date.

“*Amortization Payment*” has the meaning set forth in Section 2.16(d) hereof.

“*Amortization Payment Date*” means (a) the Initial Amortization Payment Date and each three-month anniversary of the Initial Amortization Payment Date occurring thereafter which occurs prior to the Amortization End Date and (b) the Amortization End Date.

“Amortization Period” has the meaning set forth in Section 2.16(d) hereof.

“Annual Debt Service” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, Letters of Credit, other Parity Debt and other Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) the quotient obtained by dividing the average daily outstanding principal balance of the Loans, other Parity Debt, the stated amounts of Letters of Credit and Subordinate Debt during such Fiscal Year or other designated four fiscal quarter period by 5.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

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

“Audited Financial Statements” has the meaning set forth in Section 4.6 hereof.

“Authorized Representative” means an “Authorized Representative” as defined in the Resolution, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by Borrower and delivered to Lender.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.19(d).

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

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day plus two percent (2.00%), (b) the Federal Funds Effective Rate in effect on such day plus four percent (4.0%) per annum, and (c) five percent (5.0%).

“Basic Documents” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) the Fee Agreement, and (c) and any other documents executed

and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“*Benchmark*” means, initially, the Term SOFR Reference Rate; *provided* that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.19(a).

“*Benchmark Replacement*” means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Lender and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Basic Documents.

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

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

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

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness,

non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

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

“*Benchmark Transition Start Date*” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“*Benchmark Unavailability Period*” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.19 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.19.

“*Board*” means the Board of Directors of Borrower.

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

“*Borrowing*” means the making of a Loan pursuant to Article II hereof.

“*Borrowing Request*” means a request by Borrower for a Borrowing in accordance with Section 2.3 hereof and in the form of Exhibit B hereto.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco, California are authorized or required by law to remain closed.

“*Change in Law*” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by Lender (or, for purposes of Section 2.10(b) hereof, by any lending office of Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Closing Date*” means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by Lender.

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

“*Collateral Agent*” has the meaning set forth in the Security Agreement.

“*Commitment*” means the commitment of Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.5 hereof. The initial amount of the Commitment is \$225,000,000.

“*Conforming Changes*” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.19 and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Basic Documents).

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

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, “Controlling” and “Controlled” have meanings correlative thereto.

“*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, (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, (g) the net obligations of such Person under any Swap Agreement and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“*Debt Service Coverage Ratio*” means, for any period of determination, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the

four consecutive fiscal quarter periods ended on the last date of such fiscal quarter [current quarter or last quarter?].

“*Debt Service Coverage Ratio Notice*” has the meaning set forth in Section 5.1(q) hereof.

“*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.

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

“*Direction Letter*” has the meaning set forth in the Security Agreement.

“*dollars*” or “*\$*” refers to lawful money of the United States of America.

“*EEl Master Agreement*” means the EEl Master Power Purchase and Sale Agreement, version 2.1 (modified 4/25/00), created by the Edison Electric Institute and National Energy Marketers Association.

“*Electronic System*” means any electronic system, including e-mail, e-fax, web portal access for Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Lender and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

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

“*Employee Plan*” means an employee benefit plan covered by Title W of ERISA and maintained for employees of Borrower.

“*Environmental Laws*” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Event of Default*” has the meaning set forth in Section 6.1 hereof.

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

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

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall set forth on NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, *provided* that if the Federal Funds Effective Rate as so determined would be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for the purposes of this Agreement.

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

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

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

“*Floor*” means a rate of interest equal to 0.25%.

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

“*Governmental Approval*” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“*Governmental Authority*” means the government of the United States 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, or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Guarantees*” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

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

“*Initial Amortization Payment Date*” means the Maturity Date.

“*Intercreditor and Collateral Agency Agreement*” means the Intercreditor and Collateral Agency Agreement, attached hereto as Exhibit E, as amended and supplemented in accordance with the terms hereof, is entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, for the benefit of the PPA Providers, and its successors and assigns in such capacity, (ii) each of the creditors from time to time signatory thereto that are party to a Power Purchase Agreement (as defined in the Security Agreement), and (iii) EBCEA.

“*Interest Payment Date*” means the last day of each Interest Period and the Maturity Date.

“*Interest Period*” means, as to any Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the numerically corresponding day in the calendar month that is one month thereafter (in each case, subject to the availability thereof), as specified in the applicable Borrowing Request; *provided* that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond the Maturity Date and (iv) no tenor that has been removed from this definition pursuant to Section 2.19(d) shall be available for specification in such Borrowing Request. For purposes hereof, the date of a Loan or Borrowing initially shall be the date on which such Loan or Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan or Borrowing.

“*Investment Policy*” means the investment guidelines of Borrower, as the same may be adopted by Borrower and amended from time to time in accordance with State laws.

“*Joint Powers Act*” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.)

“*Joint Powers Agreement*” means the Joint Powers Agreement of Borrower effective as of December 1, 2016, as amended by Resolution No. 2018-23 dated June 20, 2018, and as further amended from time to time.¹

“*Law*” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“*LC Collateral Account*” has the meaning set forth in Section 2.17(h) hereof.

“*LC Disbursement*” means a payment made by Lender pursuant to a Letter of Credit.

“*LC Exposure*” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of Borrower at such time.

“*Letter of Credit*” means any letter of credit issued pursuant to this Agreement.

“*Letter of Credit Fees*” has the meaning set forth in the Fee Agreement.

“*Letter of Credit Request*” means a request by Borrower for a Letter of Credit in accordance with Section 2.17(a) hereof and in the form specified by Lender from time to time.

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

“*Liabilities*” mean all claims (including intraparty claims), actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“*Lien*” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“*Loans*” means individually, each Revolving Loan and the Term Loan under this Agreement and, collectively, the Revolving Loans and Term Loan under this Agreement.

“*Lockbox Account*” has the meaning set forth in the Account Control Agreement.

¹ Please provide a copy of the resolution referenced here.

“*Lockbox Security Document(s)*” means, individually or collectively, as applicable, the Security Agreement, the Account Control Agreement, the Intercreditor and Collateral Agency Agreement and the Direction Letter.

“*Material Adverse Change*” means any material or adverse change in the operations, properties, assets, liability or financial condition Borrower which, in the reasonable determination of Lender, materially impairs Borrower’s ability to perform Borrower’s Obligations hereunder.

“*Material Adverse Effect*” means (a) a Material Adverse Change; (b) a material impairment of the rights and remedies of any Lender under this Agreement or any other Basic Document; (c) the ability of Borrower to perform its Borrower’s Obligations under this Agreement and any other Basic Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement or any other Basic Document to which Borrower is a party.

“*Material Litigation*” shall have the meaning assigned to such term in Section 4.5 hereof.

“*Maturity Date*” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on [_____], 2025, or such later date to which the Maturity Date may be extended pursuant to Section 2.14 hereof and, if any such date is not a Business Day, the next preceding Business Day.

“*Maximum Rate*” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“*Member*” or “*Members*” means, individually or collectively, as applicable, (i) County of Alameda, (ii) City of Albany, (iii) City of Berkeley, (iv) City of Dublin, (v) City of Emeryville, (vi) City of Fremont, (vii) City of Hayward, (viii) City of Livermore, (ix) City of Newark, (x) City of Oakland, (xi) City of Piedmont, (xii) City of Pleasanton, (xiii) City of San Leandro, (xiv) City of Tracy, and (xv) City of Union City.

“*Net Revenues*” means, for any period and as of any date of determination, the amount obtained by subtracting Operating and Maintenance Costs from Revenues, in each case for such period as of such date. Net Revenues does not include the “*Collateral*” as defined under the Security Agreement.

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

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

“*Obligations*” means all obligations of Borrower to Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees (including, without limitation, the Undrawn Fee and the Letter of Credit Fees) and all expenses,

reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of Borrower to Lender or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Basic Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“Operating and Maintenance Costs” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission, the cost to purchase Regulatory Compliance Products, the cost of preparing and filing regulatory plans, reports and filings required by Governmental Authority, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, retirement benefits, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of legal counsel and an independent certified public accountant, and including Borrower’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. Operating and Maintenance Costs shall include all amounts required to be paid by Borrower under contracts for the purchase of Product.

“Operating Account” means the deposit account of Borrower established with Lender and used by Borrower for operating purposes.

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

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

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

“*Participant*” has the meaning set forth in Section 7.3(b) hereof.

“*Participation*” has the meaning set forth in Section 7.3(b) hereof.

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

“*Person*” means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*PPA*” means any agreement for the purchase of Product executed between Borrower and a PPA Counterparty. For greater clarity, “PPA” includes Power Purchase Agreements (as defined under the Security Agreement), EEI Master Agreements, and individual transaction confirmations executed under an EEI Master Agreement or WSPP Agreement. A PPA may be for short term or multi-year transactions for the purchase of Products.

“*PPA Counterparty*” means a party to a PPA other than Borrower.

“*Prime Rate*” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Lender) or any similar release by the Federal Reserve Board (as determined by Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“*Product*” means any of the following: energy, renewable energy attributes, capacity attributes, transmission rights, resource adequacy benefits, or any other similar or related products contemplated in the PPAs.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Reimbursement Obligations*” means any and all obligations of Borrower to reimburse Lender for LC Disbursements under Letters of Credit and all obligations to repay Lender for any Loan relating thereto, including in each instance all interest accrued thereon.

“*Regulatory Compliance Product*” means any Product required to be purchased by Borrower to satisfy the requirements of the California Public Utilities Commission, the Federal Energy Regulatory Commission, the California Independent System Operator or any other Governmental Authority with jurisdiction over the operation of the System.

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

“*Relevant Governmental Body*” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“*Requirement of Law*” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“*Reserve Policy*” means the Financial Reserve Policy of the Borrower, effective as of January 20, 2021 pursuant to Resolution No. R-2021-2, as the same may be amended or supplemented from time to time in accordance with the terms hereof and thereof.

“*Resolution*” means Resolution No. [_____], adopted by EBCEA on [_____], as the same may be amended or supplemented from time to time in accordance with the terms hereof and thereof.

“*Revenues*” means all revenues, rates and charges received and accrued by Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the System, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

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

“*Revolving Loan*” means, collectively and individually, each revolving loan extended by Lender to Borrower pursuant to the terms and conditions hereof, which shall be a Daily SOFR Rate Loan, and, after the Term SOFR Transition Date, a Term SOFR Rate Loan.

“*Sanctioned Country*” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

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

Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“*Sanctions*” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“*Security Agreement*” means the Security Agreement, dated as of February 12, 2018, attached hereto as Exhibit F, as amended and supplemented in accordance with the terms hereof, by and among EBCEA, as pledgor, River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, for the benefit of the PPA Providers (as defined in the Security Agreement) as Secured Creditors (as defined in the Security Agreement).

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

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*State*” means the State of California.

“*Subordinate Debt*” means any unsecured Debt of Borrower issued or incurred by Borrower, the payment of which is subordinate to the payment in full of Borrower’s payment Obligations under this Agreement in form and substance satisfactory to Lender.

“*Swap Agreement*” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or any option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrower or the Subsidiaries shall be a Swap Agreement.

“*Swap Termination Value*” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include Lender or any Affiliate of Lender).

“*System*” means (i) contractual rights to generation, distribution, metering and billing services, electric power, resource adequacy, scheduling and coordination and transmission capacity of Borrower for the generation, transmission and distribution of electric power to its customers, and behind the meter/distributive energy resources, (ii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*S&P*” means S&P Global Ratings, and any successor rating agency.

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

“*Term Loan*” means a Revolving Loan that is converted to a Term Loan pursuant to Section 2.16 hereof.

“*Term SOFR*” means, for any calculation with respect to a Term SOFR Rate Loan, the Term SOFR Reference Rate for a tenor comparable to the Interest Period on the day (such day, the “*Periodic Term SOFR Determination Day*”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; *provided, however*, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; *provided, further*, that if Term SOFR determined as provided above shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“*Term SOFR Administrator*” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Lender in its reasonable discretion).

“*Term SOFR Rate*” means a fluctuating rate per annum equal to the sum of (i) Term SOFR, and (ii) the Applicable Margin.

“*Term SOFR Rate Loan*” means a Revolving Loan which then bears interest at the Term SOFR Rate.

“*Term SOFR Reference Rate*” means the forward-looking term rate based on SOFR.

“*Term Out Rate*” means, for each day of determination on and after the Maturity Date, a fluctuating rate per annum, with respect to any Term Loan, equal to the Base Rate from time to time in effect plus one percent (1.00%); *provided* that from and after the occurrence of an Event of Default, “*Term Out Rate*” shall mean the Default Rate.

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

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

“*WSPP Agreement*” means the WSPP Agreement created by WSPP Inc. and filed with the Federal Energy Regulatory Commission, as revised by the WSPP Inc. from time to time.

“*U.S. Government Securities Business Day*” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Section 1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (c) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if Borrower notifies Lender that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before

such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.4. Rates. Lender does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Lender and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. Lender may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE 2

THE CREDITS

Section 2.1. Commitments. Subject to the terms and conditions set forth herein, Lender agrees to make Loans to Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7 hereof) in the Revolving Credit Exposure exceeding the Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, Borrower may borrow, prepay and reborrow Loans.

Section 2.2. Loans and Borrowings. Each Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$200,000. Each Revolving Loan shall be made solely for the purpose of working capital and general purposes, including without limitation, the purchase of Products or posting of collateral in connection with the purchase of Products. The Revolving Credit Exposure at any time shall not exceed the Commitment at such time.

Section 2.3. Requests for Revolving Borrowings. To request a Borrowing, Borrower shall notify Lender of such request by telephone not later than 10:00 a.m., New York City time three (3) U.S. Government Securities Business Days before the date of the proposed Borrowing. Each such telephonic request for a Borrowing shall be irrevocable and shall be confirmed promptly by

electronic means to Lender in the form of a written Borrowing Request as attached hereto as Exhibit B and signed by an Authorized Representative of Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit B hereto. Subject to satisfaction of the terms and conditions of Section 3.2 hereof, Lender shall make available to, or for the account of, Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on date of the applicable Borrowing. If, after examination, Lender shall have determined that a Borrowing Request does not conform to the terms and conditions hereof, then Lender shall use its best efforts to give notice to Borrower to the effect that documentation was not in accordance with the terms and conditions hereof and stating the reasons therefor. Borrower may attempt to correct any such nonconforming Borrowing Request, if, and to the extent that, Borrower is entitled (without regard to the provisions of this sentence) and able to do so.

Section 2.4. Interest Elections. Lender shall promptly notify Borrower of the Term SOFR Rate for any Revolving Loan upon determination of such interest rate; *provided, however,* that the failure by Lender to provide notice of the applicable interest rate shall not relieve Borrower of its obligation to make payment of amounts as and when due hereunder. Each determination by Lender of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

Section 2.5. Termination and Reduction of Commitment. (a) Unless previously terminated, the Commitment shall terminate automatically on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, Borrower may at any time terminate, or from time to time reduce, the Commitment; *provided* that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000 and (ii) Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.7 hereof, the Revolving Credit Exposure would exceed the Commitment.

(c) Borrower shall notify Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least ten (10) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by Borrower pursuant to this Section shall be irrevocable. Any termination or reduction of the Commitment shall be permanent.

Section 2.6. Repayment of Loans; Evidence of Debt. (a) Subject to Section 2.16 hereof, Borrower hereby unconditionally promises to pay to Lender the then unpaid principal amount of each Loan and any then unpaid accrued interest on such Loan on the Maturity Date.

(b) Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to Lender resulting from each Loan made by Lender and the amounts of principal and interest payable and paid to Lender from time to time hereunder. The entries made in such account or accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Loans shall be evidenced by a promissory note in the form of Exhibit C attached hereto (which, for the avoidance of doubt, includes any applicable Revolving Loans and the Term Loan). Borrower shall prepare, execute and deliver to Lender such promissory note as set forth in the immediately preceding sentence payable to Lender and in a form approved by Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3 hereof) be represented by such promissory note.

Section 2.7. Prepayment of Loans. (a) Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, on the last day of any applicable Interest Period, without penalty, subject to prior notice in accordance with paragraph (b) of this Section. If the Borrower shall elect to prepay any Borrowing on any day that is not the last day of the applicable Interest Period for such Borrowing, then Borrower shall pay to Lender in immediately available funds on the date of such prepayment any fees calculated in accordance with Section 2.20 hereof.

(b) Borrower shall notify Lender by telephone (confirmed by electronic mail) or through the Electronic System, if arrangements for doing so have been approved by Lender, of any prepayment hereunder not later than 10:00 a.m., New York City time, ten (10) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid.

Section 2.8. Fees. Borrower agrees to pay to Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.9. Interest. (a) The Revolving Loans shall bear interest at the Term SOFR Rate.

(b) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans and Letters of Credit. Interest and fees for Loans and Letters of Credit accruing at the Default Rate shall be payable on demand to Lender.

(c) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; *provided* that (i) interest accrued pursuant to paragraph (e) of this Section shall be payable on demand, and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed. The applicable Term SOFR Rate shall be determined by Lender, and such determination shall be conclusive absent manifest error.

(e) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, Borrower shall pay to Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.9(e) that has not previously been paid to Lender in accordance with the immediately preceding sentence.

Section 2.10. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, Lender; or

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

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

and the result of any of the foregoing shall be to increase the cost to Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by Lender hereunder (whether of principal, interest or otherwise), then Borrower will pay to Lender such additional amount or amounts as will compensate Lender for such additional costs incurred or reduction suffered.

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

(c) A certificate of Lender setting forth the amount or amounts necessary to compensate Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender's right to demand such compensation, *provided* that Borrower shall not be required to compensate Lender pursuant to this Section for any increased costs incurred or reductions suffered more than twelve (12) months prior to the date that Lender or notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of Lender's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.11. Payments Free of Taxes. (a) Any and all payments by or on account of any obligation of Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.11) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. The foregoing obligation of Borrower shall not apply to any payment to a Participant that is a non-U.S. person that would be subject to withholding under FATCA.

(b) Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Lender timely reimburse Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.11, Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender.

(d) Borrower shall indemnify Lender, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Lender or required to be withheld or deducted from a payment to Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A reasonably detailed certificate as to the calculation of the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error.

(e) If Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.11 (including by the payment of additional amounts pursuant to this Section 2.11), it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.11 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Borrower, upon the request of Lender, shall repay to Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will Lender be required to pay any amount to Borrower pursuant to this paragraph (e) the payment of which would place Lender in a less favorable net after-Tax position than Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

(f) Each party's obligations under this Section 2.11 shall survive any assignment of rights by Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

Section 2.12. Payments Generally. (a) Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees, or reimbursement of LC Disbursements, or of amounts payable under Section 2.10, 2.11 or 2.17 hereof, or otherwise) prior to 3:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Lender at its offices at **[Commercial Loan Operations, 1980 Saturn Street, 1st Floor, MC V01-120, Monterey Park, California 91755]**, or such other location as Lender may direct in writing to Borrower from time to time, except that payments pursuant to Sections 2.10, 2.11 or 2.17 and 7.5 hereof shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

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

Section 2.13. Mitigation Obligation. If Lender requests compensation under Section 2.10 hereof, or if Borrower is required to pay any Indemnified Taxes or additional amounts to Lender or any Governmental Authority for the account of Lender pursuant to Section 2.11 hereof, then

Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.10 or 2.11 hereof, as the case may be, in the future and (ii) would not subject Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by Lender in connection with any such designation or assignment.

Section 2.14. Extension of Maturity Date. The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.14. Upon receipt of written request of Borrower to extend the Maturity Date, received no more than three hundred sixty-five (365) days and no less than forty-five (45) days prior to the then current Maturity Date, Lender will use its commercially reasonable efforts to notify Borrower of its response within thirty (30) days of receipt of the request therefor (Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which Lender and Borrower may agree); *provided, however*, that the failure of Borrower to receive a written confirmation from Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless Lender and Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.15. Security of Obligations. The Net Revenues shall be and hereby are pledged by Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in this Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and all Obligations hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt. In addition to the security set forth in this Section 2.15, Borrower shall also provide to Lender a lien on and security interest in the Operating Account.

Section 2.16. Term Loan. (a) Borrower shall have the option to convert the unpaid principal amount of any Revolving Loan to a single Term Loan if the conditions set forth in Section 2.16(b) hereof are satisfied on and as of the Maturity Date.

(b) The obligation of Lender to convert the principal amount owed on a Revolving Loan to a Term Loan shall be subject to the fulfillment of each of the following conditions precedent on the Maturity Date in a manner satisfactory to Lender:

(i) the representations and warranties of Borrower contained herein and in each of the other Basic Documents and each certificate, letter, other writing or instrument delivered by Borrower to Lender pursuant hereto or thereto are true and correct on and as of the Maturity Date as though made on and as of such date; and

(ii) no Default or Event of Default has occurred and is continuing as of the Maturity Date or would result from converting a Revolving Loan to a Term Loan.

(c) The Term Loan shall bear interest from the Maturity Date to the date the Term Loan is paid in full at a rate per annum equal to Term Out Rate as determined by Lender. Interest on the Term Loan shall be paid to Lender quarterly in arrears on the last Business Day of each March, June, September, and December. Interest on the Term Loan shall be calculated on the basis of a year of 360 days based on the actual number of days elapsed.

(d) The principal of the Term Loan shall be paid in installments payable on each Amortization Payment Date (each such payment, an "*Amortization Payment*"), with the final installment in an amount equal to the entire then-outstanding principal amount of the Term Loan to be paid in full on the Amortization End Date (the period commencing on the Maturity Date and ending on the Amortization End Date is herein referred to as the "*Amortization Period*"). Each Amortization Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Payments over the Amortization Period.

Section 2.17. Letters of Credit.

(a) *General.* Subject to the terms and conditions set forth herein, Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of maintenance and operating requirements to the System, including, but not limited to, PPA payment or collateral obligations, collateral postings with the California Independent System Operator and the posting of collateral for regulatory obligations pursuant to the requirements of the California Public Utilities Commission, in the form of a Letter of Credit Request at any time and from time to time during the Availability Period; *provided, however*, that prior to the issuance of each Letter of Credit hereunder, Borrower shall execute a Letter of Credit Request in the form prescribed by Lender from time to time. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), Borrower shall hand deliver or fax (or transmit through an Electronic System approved by Lender) to Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five (5) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the

beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the Revolving Credit Exposure shall not exceed the Commitment.

Lender shall not be under any obligation to issue any Letter of Credit if:

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

(ii) the issuance of such Letter of Credit would violate one or more policies of Lender applicable to letters of credit generally.

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

(d) *Reimbursement.* If Lender shall make any LC Disbursement in respect of a Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to Lender an amount equal to such LC Disbursement not later than 11:00 a.m., New York City time, on the date that such LC Disbursement is made, if Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by Borrower prior to such time on such date, then not later than 11:00 a.m., New York City time, on the Business Day immediately following the day that Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, if such LC Disbursement is not less than \$250,000, and no Default or Event of Default shall have occurred, Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 hereof that such payment be financed as a Revolving Loan in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting Revolving Loan.

(e) *Obligations Absolute.* Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document

presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder. Neither Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of Lender; *provided* that the foregoing shall not be construed to excuse Lender from liability to Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are caused by Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of Lender (as finally determined by a court of competent jurisdiction), Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) *Disbursement Procedures.* Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Lender shall promptly after such examination notify Borrower by telephone (confirmed by fax or through an Electronic System) of such demand for payment if Lender has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse Lender with respect to any such LC Disbursement.

(g) *Cash Collateralization.* If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from Lender demanding the deposit of cash collateral pursuant to this paragraph, Borrower shall deposit in an account with Lender, in the name and for the benefit of Lender (the "*LC Collateral Account*"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in Section 6.1(c) or Section 6.1(f) hereof. Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and Borrower hereby grants Lender a security

interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of Lender and at Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by Lender for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to Borrower within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by Lender.

Section 2.18. Inability to Determine Rates; Illegality. Subject to Section 2.19, if, on or prior to the first day of any Interest Period for any Term SOFR Rate Loan:

(a) Lender determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof, or

(b) Lender determines that for any reason in connection with any request for a Term SOFR Rate Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Rate Loan does not adequately and fairly reflect the cost to Lender of funding such Loan, or

(c) if Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate or Term SOFR, or to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate or Term SOFR, then, upon notice thereof by Lender to Borrower any obligation of Lender to make Term SOFR Rate Loans, and any right of the Borrower to continue Term SOFR Rate Loans shall be suspended, in each case until Lender notifies Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, if necessary to avoid such illegality, upon demand from Lender, prepay or, if applicable, convert all Term SOFR Rate Loans to Loans that bear interest at the Base Rate, on the last day of the Interest Period therefor, if Lender may lawfully continue to maintain such Term SOFR Rate Loan to such day, or immediately, if Lender may not lawfully continue to maintain such Term SOFR Rate Loan to such day. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.20; then

Lender will promptly so notify the Borrower.

Upon notice thereof by Lender to the Borrower, any obligation of Lender to make Term SOFR Rate Loans, shall be suspended (to the extent of the affected Term SOFR Rate Loans or

affected Interest Periods) until Lender revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of Term SOFR Rate Loans (to the extent of the affected Term SOFR Rate Loans or affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of Loans that bear interest at the Base Rate in the amount specified therein and (ii) any outstanding affected Term SOFR Rate Loans will be deemed to have been converted into Loans that bear interest at the Base Rate at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.20.

Section 2.19. Benchmark Replacement Setting.

(a) *Benchmark Replacement.* (i) Notwithstanding anything to the contrary herein or in any other Basic Document, upon the occurrence of a Benchmark Transition Event, Lender and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.19(a)(i) will occur prior to the applicable Benchmark Transition Start Date.

(ii) No swap agreement shall be deemed to be a “Basic Document” for purposes of this Section 2.19).

(b) *Benchmark Replacement Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Basic Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Basic Document.

(c) *Notices; Standards for Decisions and Determinations.* Lender will promptly notify Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Lender will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.19(d). Any determination, decision or election that may be made by Lender pursuant to this Section 2.19, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Basic Document, except, in each case, as expressly required pursuant to this Section 2.19.

(d) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Basic Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Lender in its reasonable discretion or (B) the administrator of such Benchmark or the

regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) *Benchmark Unavailability Period.* Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Borrowing of Term SOFR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Loans that bear interest at the Base Rate. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

Section 2.20. Compensation for Losses. In the event of (a) the payment of any principal of any Term SOFR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Term SOFR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), or (c) the failure to borrow, convert, continue or prepay any Term SOFR Rate Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

ARTICLE 3

CONDITIONS

Section 3.1. Conditions Precedent to Effectiveness. The obligation of Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

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

(b) *Documents.* (i) Lender has received executed copies of the Basic Documents executed by Borrower on the Closing Date or prior to the Closing Date if certified by the Secretary of Borrower, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date.

(ii) Lender has received a certified copy of the Joint Powers Agreement, representative examples satisfactory to it of PPAs entered into as of the Closing Date, and the Resolution.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of Borrower set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement, each as certified to by an Authorized Representative of the Board.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of Borrower, threatened (i) in connection with the Basic Documents or any transactions contemplated thereby or (ii) against or affecting Borrower, the result of which could have a Material Adverse Effect.

(e) *No Material Adverse Change.* Since the date of the audited financial statements dated as of June 30, 2021, (i) no Material Adverse Change has occurred in the status of the business, operations or condition (financial or otherwise) of Borrower or its ability to perform its obligations under the Basic Documents and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent Lender from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* Lender has received (i) certified copies of all proceedings of Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by Borrower pursuant hereto or thereto, on which certification Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees.* Lender has received all fees and expenses due and payable to Lender and/or its legal counsel pursuant to the Fee Agreement.

(h) *Financial Statements.* Lender has received the audited and unaudited financial statements dated as of June 30, 2021 and June 30, 2022, respectively, internally prepared quarterly budget reports of Borrower for the most recent fiscal quarter end, if not previously provided, in form and substance satisfactory to Lender.

(i) *Budget.* Lender has received copies of the current financial information, budgets, or projections, as requested by Lender.

(j) *Other Matters.* Lender has received such other statements, certificates, agreements, documents and information with respect to Borrower and matters contemplated by this Agreement as Lender may have requested.

Section 3.2. Conditions Precedent to each Credit Event. The obligation of Lender to make a Loan on the occasion of any Borrowing, and of Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of Borrower set forth in Article 4 of this Agreement shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) It has provided Lender with a completed Borrowing Request substantially in the form of Exhibit B hereto.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

In order to induce Lender to make Loans and issue the Letters of Credit, Borrower represents and warrants to Lender as follows:

Section 4.1. Organization, Powers, Etc. Borrower (a) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified could not reasonably be expected to have a Material Adverse Effect. Borrower has the agency power to (i) execute, deliver and perform its obligations under the Basic Documents; (ii) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) has complied with all Laws in all matters related to such actions of Borrower as are contemplated by the Basic Documents.

Section 4.2. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance by Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of Borrower, (b) do not conflict with, or result in a violation of, any Laws, including the Joint Powers Agreement, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to Borrower which violation would result in a Material Adverse Effect and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which Borrower is a party or by which Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect.

Section 4.3. Binding Obligations. The Basic Documents are valid and binding obligations of Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.4. Governmental Consent or Approval. No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of Borrower for execution, delivery and performance by Borrower of the Basic Documents.

Section 4.5. Absence of Material Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of Borrower, threatened against or

affecting Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by Borrower of the Basic Documents or any proceeding taken or to be taken by Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by Borrower of the Basic Documents, or which could reasonably be expected to result in any Material Adverse Effect, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as “*Material Litigation*”).

Section 4.6. Financial Condition. The most recent audited financial statements of the Borrower delivered (or deemed delivered) to Lender (the “*Audited Financial Statements*”) were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to Lender. The most recent unaudited financial statements of the System delivered (or deemed delivered) to Lender were prepared on a consistent basis and in accordance with GAAP. The data on which such financial statements and budget reports are based were true and correct in all material respects. The Audited Financial Statements and the budget reports present fairly the net position of the System as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended..

Section 4.7. Incorporation of Representations and Warranties. The representations and warranties of Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of Lender.

Section 4.8. Accuracy and Completeness of Information. The Basic Documents and all certificates, financial statements, documents and other written information furnished to Lender by or on behalf of Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.9. No Default. (a) No Default or Event of Default under this Agreement has occurred and is continuing.

(b) No “event of default” with respect to Borrower, or, to the actual knowledge of Borrower, with respect to any other party, has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not

limited to, any PPA) to which Borrower is a party or which purports to be binding on Borrower or on any of the property of Borrower.

Section 4.10. No Proposed Legal Changes. There is no amendment or, to the knowledge of Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

Section 4.11. Compliance with Laws, Etc. Borrower is in compliance with the Investment Policy and all Laws applicable to Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect. In addition, no benefit plan maintained by Borrower for its employees is subject to the provisions of ERISA, and Borrower is in compliance with all Laws in respect of each such benefit plan.

Section 4.12. Environmental Matters. Borrower contracts for all of Products necessary for the operation of the System. Borrower has not taken any action in the operation of the System that would constitute a violation of any Environmental Laws and which violation could reasonably be expected to result in a Material Adverse Effect.

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

Section 4.14. Liens. This Agreement creates a valid Lien on and pledge of Net Revenues to secure the payment and performance of Borrower's obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of Borrower, Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement, there is no pledge of or Lien on Net Revenues.

Section 4.15. Sovereign Immunity. Borrower is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or its revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be made subject in any action, suit or proceeding relating to this Agreement or any other Basic Document, and no such immunity (whether or not claimed) may be attributed to Borrower or its revenues.

Section 4.16. Usury. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17. Insurance. As of the Closing Date, Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18. ERISA/CALPERS. Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA. Borrower does plan to offer retirement benefits to its employees pursuant to the California Public Employees' Retirement System, which is a government funded plan that is not subject to ERISA.

Section 4.19. Sanctions Concerns and Anti-Corruption Laws. Borrower and its respective officers and directors and to the knowledge of Borrower, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) Borrower, any of its directors or officers or employees, or (b) to the knowledge of Borrower, any agent of Borrower that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Basic Documents will violate Anti-Corruption Laws or applicable Sanctions.

Section 4.20. Debt of Borrower. As of the Closing Date, Borrower has not incurred or issued any Debt of Borrower other than the Debt of Borrower created under this Agreement.

ARTICLE 5

COVENANTS

Section 5.1. Affirmative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, Borrower covenants and agrees with Lender that:

(a) *Accounting and Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to Lender:

(i) as soon as available, and in any event within **[forty-five (45)]²** days after each fiscal quarter of Borrower, an unaudited balance sheet of Borrower, as of the last day of the quarterly period then ended and the statements of income, retained earnings and cash flows of Borrower for the four (4) fiscal quarters period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within six (6) months after the close of each Fiscal Year of Borrower, a copy of the audited balance sheet of Borrower, as of the last day of the Fiscal Year then ended and the statements of income, retained earnings and cash flows of Borrower for the Fiscal Year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the

² To be discussed.

effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, and in any event within forty-five (45) days of adoption, Borrower shall provide Lender its annual budget;

(vi) reserved;

(vii) promptly after receipt thereof, representative copies of each PPA entered into by Borrower;

(viii) reserved;

(ix) immediately upon any such occurrence, written notice as to the dissolution of the Lockbox Account and/or termination of the Security Agreement; and

(x) promptly after the request therefor, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit A hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default and, in connection with the financial statements furnished to Lender pursuant to subsection (a)(i), compliance with Section 5.1(q).

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, Borrower shall permit Lender or any of its agents or representatives to visit and inspect any of the properties of Borrower and the other assets of Borrower, to examine the books of account of Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of System.*

(i) Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, Lender is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of Lender, and Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. Borrower shall give prior written notice to Lender of any action referred to in this subparagraph (i).

(ii) Borrower will enter into, perform and maintain such contractual relationships and PPAs as are necessary for Borrower to provide Product and such other services and resources as are necessary for the operation of the System.

(d) *Defaults.* Borrower shall notify Lender of any Default or Event of Default of which Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* Borrower shall comply in all material respects with all Laws binding upon or applicable to Borrower (including Environmental Laws) and material to the Basic Documents. Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Borrower will not use or allow any tenants or subtenants to use its Property for any business activity that violates any federal or state law or that supports a business that violates any federal or state law.

(f) *Reserved.*

(g) *Notices.* Borrower shall promptly give notice to Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of Borrower to perform its obligations under any Basic Document.

(h) *Reserved.*

(i) *Further Assurances.* Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Additional Notices.* Borrower shall promptly furnish, or cause to be furnished, to Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under (x) any Basic Document (other than this Agreement and the Fee Agreement), or (y) any event of default under a PPA that could have a Material Adverse Effect, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other Debt of Borrower which are not restricted or prohibited from being shared with Lender under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed modification to any Lockbox Security Document, (iv) notice of any proposed substitution of any Letter of Credit, and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect.

(k) *Maintenance of Insurance.* Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however,* that Borrower may maintain self-insurance coverage from a California public agency risk pool. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as Borrower. Borrower shall, upon request of Lender, furnish evidence of such insurance to Lender. Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the System.

(l) *Preservation of Security.* Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(m) *Rates.* Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the System, which shall be set in accordance with applicable law and shall be sufficient to provide Borrower with Revenues in each Fiscal Year sufficient to pay, to the extent not paid from other available moneys, any and all amounts Borrower is obligated to pay or set aside from Revenues by law or contract in such Fiscal Year (including, without limitation, all Obligations when due hereunder).

(n) *Budget.* Borrower shall include in each annual budget of Borrower all amounts reasonably anticipated to be necessary to pay all obligations due to Lender hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, Borrower shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to Lender during the course of the Fiscal Year to which such annual budget applies.

(o) *Payment of Taxes, Etc.* Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon Borrower on account of the System or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(p) *Lockbox Security Documents and PPAs.* Borrower shall perform and comply with all its agreements and covenants set forth in the Lockbox Security Documents and the PPAs. Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing) any Lockbox Security Document in any manner that could reasonably be expected to have a materially adverse effect on the interests of Lender without the prior written consent of Lender, and Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by Lender to strictly enforce the obligations of the other parties to any of the Lockbox Security Documents, as well as each of the covenants set forth therein. Borrower shall give prior written notice to Lender of any proposed action referred to in this subparagraph (p).

(q) *Debt Service Coverage.* Borrower shall maintain a Debt Service Coverage Ratio for each fiscal quarter of Borrower of not less than 1:00:1.00. The Debt Service Coverage Ratio shall be tested on a rolling last twelve-month basis. Borrower shall determine the Debt Service Coverage Ratio at each fiscal quarter and provide written notice thereof together with supporting calculations in reasonable detail to Lender as soon as practicable following the end of a fiscal quarter and in any event no later than forty-five (45) calendar days following the end of such fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

(r) *Reserve Policy.* Borrower shall comply with the terms of its Reserve Policy in all respects and shall not amend such Reserve Policy without the prior written consent of Lender, which such consent shall not be unreasonably withheld.

(s) *Use of Proceeds.* (i) The proceeds of the Loans will be used only for the purposes expressly provided for in this Agreement. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X. Letters of Credit will be issued only for the purposes described in Section 2.17(a).

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

(u) *Reserved.*

(v) *Operating Accounts.* Borrower shall (i) no later than ninety (90) days after the Closing Date, open an operating account with the Lender, (ii) cause its Lockbox Account to be swept to such operating accounts held by Lender on a monthly basis pursuant to documents satisfactory to Lender, and (iii) upon any dissolution of Borrower's Lockbox Account, immediate transfer of all funds in the Lockbox account to Borrower's primary operating accounts with Lender.

(x) *Operating Account.* Borrower shall promptly direct funds received from the Collateral Agent pursuant to Section 6.02(iv) of the Security Agreement to the Operating Account.

Section 5.2. Negative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, Borrower covenants and agrees with Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of Borrower to pay when due amounts owing to Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues as security for the

Obligations or the priority of payments from Net Revenues provided in this Agreement; or (iii) the rights or remedies of Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the System or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State. Borrower shall not permit the termination of the Joint Powers Agreement or the cessation of Borrower's CCA Program (as defined in the Joint Powers Agreement).

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues or the proceeds thereof other than the Liens (i) created by this Agreement or the Lockbox Security Documents, or (ii) securing Debt permitted to be issued under Section 5.2(i) hereof.

(f) *Sovereign Immunity.* To the fullest extent permitted by applicable law, with respect to its obligations arising under this Agreement or any other Basic Document, Borrower irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues (irrespective of their use or intended use), all such immunity.

(g) *Preservation of Existence, Etc.* Take any action to accomplish a merger, consolidation or combination of the System with any other entity or enterprise.

(h) *Use of Proceeds.* Use the Letters of Credit for any purpose other than the uses set forth in Section 2.17(a). Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure Borrower's obligations under PPAs, collateral postings with the California Independent System Operator and the posting of collateral for regulatory obligations pursuant to the requirements of the California Public Utilities Commission, (ii) to repay in whole or in part

any LC Disbursement, or (iii) for general working capital and operational purposes. For the avoidance of doubt, Loan Proceeds may not be used for long-term expenditures other than long term purchases of Products pursuant to PPA. Use the proceeds of any Loan or any Letter of Credit in violation of any Sanctions or Anti-Corruption Laws.

(i) *Debt of Borrower.* Not issue, incur or assume to exist any Parity Debt or Subordinate Debt unless Borrower shall deliver a written certification to Lender, including a reasonably detailed calculation in support thereof, certifying that, after giving pro forma effect to the incurrence of such Debt:

(i) Net Revenues for the immediately preceding twelve month period and estimated Net Revenues for the next three consecutive fiscal years of Borrower;

(ii) Annual Debt Service for the immediately preceding twelve-month period and estimated Annual Debt Service for the next three consecutive fiscal years of Borrower;

(iii) (A) Net Revenues (including any fund balances of Borrower which were available for the payment of Annual Debt Service) for the immediately preceding twelve month period were equal to or greater than 1.00 times the Annual Debt Service for the immediately preceding twelve month period; and

(B) Estimated Net Revenues (together with any fund balances of Borrower which were available for the payment of Annual Debt Service) in each of the next three consecutive fiscal years are at least 1.00 times the Annual Debt Service for each respective fiscal year.

(j) *Reserved.*

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

(l) *Amendments.* Amend, modify or supplement in any manner whatsoever the Basic Documents, the Joint Powers Agreement, the PPAs, or the Lockbox Security

Documents, in each case, in a manner which could reasonably be expected to have a Material Adverse Effect.

ARTICLE 6

DEFAULTS

Section 6.1. Events of Default and Remedies. If any of the following events occur, each such event will be an “*Event of Default*”:

(a) Borrower fails to pay, or cause to be paid, as and when due, (i) any principal of or any interest on any Loan or Reimbursement Obligation, or (ii) any other Obligation hereunder or under the Fee Agreement and, in the case of clause (ii), such failure continues for five (5) Business Days.

(b) any representation or warranty made by or on behalf of Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(a), 5.1(c), 5.1(d), 5.1(e), 5.1(g), 5.1(j), 5.1(k), 5.1(l), 5.1(m), 5.1(q), 5.1(r)(i), 5.1(s) or 5.2 hereof;

(d) Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) hereof;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) hereof is instituted against Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of Borrower by Borrower or any Governmental Authority with appropriate jurisdiction;

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

(i) dissolution or termination of the existence of Borrower;

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

(k) any final, non-appealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$500,000 are entered or filed against Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days.

(l) any “event of default” occurs under any of the Basic Documents.

Section 6.2. Remedies. Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f) hereof), and at any time thereafter during the

continuance of such event, Lender may by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) require cash collateral for the LC Exposure in accordance with Section 2.17(g) hereof and (iii) declare all Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower; and in case of any Event of Default described in Section 6.1(e) or 6.1(f) hereof, the Commitment shall automatically terminate and the principal of the Loans then outstanding, and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

ARTICLE 7

MISCELLANEOUS

Section 7.1. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender and an Authorized Representative of Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2. Notices. Except as otherwise will provided herein, notices and communications between Borrower and Lender with respect to reporting obligations, draw requests and other day to day implementation of this Agreement may be made via facsimile or Electronic System. All formal notices, including notices of default, provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express or other receipted courier service), as follows:

- (a) if to Borrower:

East Bay Community Energy Authority
 Attention: [_____]
 [_____]
 [_____]
 Email: [_____]

(b) if to Lender:

MUFG Union Bank, N.A.
445 South Figueroa Street
Floor 16
Los Angeles, California 90071
Attention: Nicholas Boyle

with a copy to:

MUFG Union Bank, N.A.
Commercial Loan Operations
1980 Saturn Street, 1st Floor
MC V01-120
Monterey Park, California 91755

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, be effective when deposited with the courier, addressed as aforesaid, except that requests for LC Disbursements submitted to Lender will not be effective until received by Lender.

Section 7.3. Survival of Covenants; Successors and Assigns. (a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of Lender. Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of Lender. Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of Borrower (which consent may not be withheld unreasonably); *provided* that Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of Borrower and Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, Lender will be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of Lender's rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of Borrower. In the event of any such grant by Lender of a Participation to a Participant, Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and Borrower may continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement,

under the Fee Agreement and under the Letters of Credit. Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were Lender; *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and *provided, further*, that Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14 hereof) will not in any event exceed that liability which Borrower would owe to Lender but for such participation.

Section 7.4. Liability of Lender; Indemnification. (a) To the extent permitted by the laws of the State, Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; *provided* that this provision is not intended to and will not preclude Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither Lender nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty or the California Independent System Operator, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by Lender against presentation of requests for LC Disbursements or requests which Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that Borrower is not required to indemnify Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent that a court of competent jurisdiction has determined by a final, non-appealable judgment were caused by the gross negligence or willful misconduct of Lender.

(b) To the extent permitted by the laws of the State, Borrower indemnifies and holds harmless Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which Lender may incur (or which may be claimed against Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; *provided* that Borrower is not required to indemnify Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between Borrower, any PPA Counterparty (including, without limitation, the California Independent System Operator) or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, Borrower shall not assert, and waives, any claim against Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as

a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of Borrower under this Section 7.5 will survive the termination of this Agreement.

Section 7.5. Expenses. Upon receipt of a written invoice, Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents, (iii) the fees and disbursements of counsel to Lender with respect to advising Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to Lender. In addition, and notwithstanding the foregoing, Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by Lender in enforcing any obligations or in collecting any payments due from Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of Borrower under this Section 7.6 will survive the termination of this Agreement.

Section 7.6. No Waiver; Conflict. Neither any failure nor any delay on the part of Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between Borrower and Lender.

Section 7.7. Modification, Amendment Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.8. Dealings. Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with Borrower and/or any PPA Counterparty (including, without limitation, the California Independent System Operator) regardless of the capacity of Lender hereunder or under any Letter of Credit.

Section 7.9. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting

the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.10. Counterparts; Integration; Effectiveness; Electronic Execution. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Basic Documents and any separate letter agreements with respect to fees payable to Lender constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it shall have been executed by Lender and when Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 7.2), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an “*Ancillary Document*”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (i) to the extent Lender has agreed to accept any Electronic Signature, Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, Borrower hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Lender and Borrower, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal

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

Section 7.11. Table of Contents; Headings. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.12. Entire Agreement. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.13. Governing Law Waiver of Jury Trial. (a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. 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 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 IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. 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.

(c) Each of the parties hereto hereby submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction in the State and sitting in the County of San Francisco for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement or any other Basic Document; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 7.2 hereof.

(d) The covenants and waivers made pursuant to this Section 7.13 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.14. USA PATRIOT Act. Lender notifies Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act. Borrower agrees to provide such documentary and other evidence of Borrower’s identity as may be requested by Lender at any time to enable Lender to verify Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.15. Assignment to Federal Reserve Bank. Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by Borrower to Lender in accordance with the terms of this Agreement will satisfy Borrower’s obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release Lender from its obligations hereunder.

Section 7.16. Acknowledgement Regarding Any Supported QFCs. To the extent that the Basic Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support “*QFC Credit Support*” and each such QFC a “*Supported QFC*”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “*U.S. Special Resolution Regimes*”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Basic Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “*Covered Party*”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such

Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Basic Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Basic Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 7.17. Arm's Length Transaction. The transaction described in this Agreement is an arm's length, commercial transaction between Borrower and Lender in which: (i) Lender is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) Lender is not acting as a municipal advisor or financial advisor to Borrower; (iii) Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether Lender or any of its affiliates has provided other services or is currently providing other services to Borrower on other matters); (iv) the only obligations Lender has to Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) Lender is not recommending that Borrower take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, Borrower should discuss the information contained herein with Borrower's own legal, accounting, tax, financial and other advisors, as Borrower deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Borrower and Lender have duly executed this Agreement as of the date first written above.

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

MUFG UNION BANK, N.A.

By: _____
Name: Jacob Ulevich
Title: Director

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “*Certificate*”) is furnished to MUFG Union Bank, N.A. (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of September [], 2022 (together with all amendments and supplements thereto, the “*Agreement*”), by and between the East Bay Community Energy Authority (including its successors and assigns, the “*Borrower*”) and Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. To the best of my knowledge the financial statements required by Section [5.1(a)(i)] [5.1(a)(ii)] 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 as of the date and for the period covered thereby.

[#5 below to be delivered quarterly together with financial statements delivered pursuant to Section 5.1(a)(i)]

5. Schedule 1 attached hereto sets forth financial data and computations evidencing the Borrower’s compliance with Section 5.1(q) of the Agreement for the trailing twelve month period. To the extent there is a discrepancy between the terms set forth in Schedule 1 and the terms set forth in the Agreement with respect to calculating the Debt Service Coverage Ratio, the Agreement shall control.

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

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____

Name: _____

Title: _____

**SCHEDULE 1
TO COMPLIANCE CERTIFICATE**

Debt Service Coverage (Section 5.1(q))

4-QUARTERS
_ / _ / _

A. NET REVENUES:

\$ _____

B. ANNUAL DEBT SERVICE:

\$ _____

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

IS THE RATIO IN ROW C GREATER THAN OR EQUAL TO 1.00?

Y/N

EXHIBIT B

FORM OF BORROWING REQUEST

_____, 20__

MUFG Union Bank, N.A.
445 South Figueroa Street
Floor 16
Los Angeles, California 90071
Attention: Nicholas Boyle

With respect to requests for Revolving Loans:

MUFG Union Bank, N.A.
Commercial Loan Operations
1980 Saturn Street, 1st Floor
MC V01-120
Monterey Park, California 91755
Attention: Rhonda Brooks

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of September [], 2022 (together with any amendments or supplements thereto, the "*Agreement*"), by and between East Bay Community Energy Authority (with its successors and assigns, the "*Borrower*") and MUFG Union Bank, N.A. (with its successors and assigns, the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the "*Proposed Loan*"):

1. The Business Day of the Proposed Loan is _____, 20__ (the "*Issuance Date*").
2. The Proposed Loan shall be a Term SOFR Rate Loan for an Interest Period of one month.
3. The principal amount of the Proposed Loan is \$ _____, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans outstanding under the Agreement will not exceed the Commitment as of the Issuance Date, and the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date.

4. The interest rate with respect to the Proposed Loan shall be the Term SOFR Rate.

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

(a) The representations and warranties of Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects (or in the case of any representation qualified by materiality, in all respects) on the date hereof, as if made on the date hereof;

(b) No Event of Default has occurred and is continuing; and

(c) No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect.

6. The proceeds for Proposed Loan are being used for the following purposes:

[(a) qualified expenditures]

[(b) working capital and general purposes]

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

[Insert wire instructions and amounts]

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____

Name: _____

Title: _____

Approved by Lender:

MUFG UNION BANK, N.A.

By: _____
Name: _____
Title: _____

EXHIBIT C

[FORM OF PROMISSORY NOTE]

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”), OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION. THIS NOTE IS SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AS PROVIDED IN SECTION 7.3 OF THE HEREIN DEFINED AGREEMENT.

**UNITED STATES OF AMERICA
STATE OF CALIFORNIA
EAST BAY COMMUNITY ENERGY AUTHORITY**

Dated Date: [_____], 2022

For value received, the EAST BAY COMMUNITY ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (together with its successors and assigns, “*Borrower*” or “*EBCEA*”) hereby promises to pay to the order of MUFG Union Bank, N.A., and its successors and assigns, as their respective interests may appear (the “*Lender*”) located at Commercial Loan Operations, 1980 Saturn Street, 1st Floor, MC V01-120, Monterey Park, California 91755, the aggregate unpaid principal amount of all Loans made by Lender from time to time pursuant to the Revolving Credit Agreement, dated as of [_____], 2022 (together with any amendments or supplements thereto, the “*Agreement*”), by and between Borrower and Lender, plus interest thereon, on the dates, in the amounts and in the manner provided for in the Agreement.

The unpaid principal amount of all Loans from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Note evidences indebtedness (including the Loans) incurred under, and is subject to the terms and provisions of, the Agreement to which reference is hereby made for a statement of said terms and provisions, including those under which this Note may be paid or become due prior to its due date. This Note is the promissory note referred to in Section 2.6(c) of the Agreement and is entitled to the benefits thereof and of the Basic Documents referred to therein. This Note is subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

This Note dated [_____], 2022 (the “*Note*”) has been issued pursuant to the Agreement.

Reference is hereby made to the Agreement for a description of the terms on which this Note is issued and all of the terms of the Agreement are hereby incorporated herein and constitute a contract between Borrower and the holder of this Note, and by acceptance hereof the holder of this Note assents to said terms and conditions.

This Note is an obligation of Borrower payable from and secured by a pledge of and a senior lien and charge upon Borrower's Net Revenues.

This Note is payable as to principal and interest thereof, exclusively from Borrower's Net Revenues.

This Note and the interest hereon are senior to all other debt incurred and payable from Borrower's Net Revenues.

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

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Note have been duly authorized by the Resolution duly adopted by Borrower. Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

IN WITNESS WHEREOF, the East Bay Community Energy Authority has caused this Note to be signed as of the Dated Date specified above.

Name:

Title:

TRANSACTIONS ON NOTE

DATE	COMMITMENT	INTEREST RATE	AMOUNT OF PRINCIPAL PAID	DATE TO WHICH INTEREST PAID	NOTATION MADE BY
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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or
Taxpayer Identification Number of Transferee
/ _____ /

(Please print or typewrite name and address, including zip code, of Transferee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints
attorney to register the transfer of the within Note on the books kept for registration thereof, with
full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a
member or participant of a signature guarantee
program

NOTICE: The signature above must correspond with
the name of the Owner as it appears upon the front
of this Note in every particular, without alteration or
enlargement or change whatsoever.

EXHIBIT D

ACCOUNT CONTROL AGREEMENT

[to be provided]

EXHIBIT E

INTERCREDITOR AGREEMENT

[to be provided]

EXHIBIT F
SECURITY AGREEMENT

[to be provided]

FEE AGREEMENT

This FEE AGREEMENT dated September [], 2022 (as amended, modified or restated from time to time, this “*Fee Agreement*”), is by and between the EAST BAY COMMUNITY ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 *et. seq.* (together with its successors and assigns, “*Borrower*”), and MUFG UNION BANK, N.A. (together with its successors and permitted assigns, the “*Lender*”).

Reference is made to the Revolving Credit Agreement, dated as of September [], 2022 (as amended, modified, extended or restated from time to time, the “*Agreement*”), entered into between Borrower and Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between Borrower and Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

ARTICLE I

FEEs

Section 1.1. Undrawn Fees. Borrower agrees to pay to Lender, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the “*Commitment End Date*”), quarterly in arrears on the first Business Day of each January, April, July and October until the Commitment End Date, and on the Commitment End Date (each, a “*Payment Date*”), a non-refundable undrawn fee (the “*Undrawn Fee*”) in an amount equal for each day during such calculation period to the product of (x) the rate per annum corresponding to the Level specified below associated with the applicable Rating (the “*Undrawn Fee Rate*”), (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

LEVEL	S&P RATING	UNDRAWN FEE RATE
Level 1	A or above	0.25% (25 basis points)
Level 2	A-	0.35% (35 basis points)
Level 3	BBB+	0.50% (50 basis points)

LEVEL	S&P RATING	UNDRAWN FEE RATE
Level 4	BBB	0.70% (70 basis points)
Level 5	Below BBB	2.20% (220 basis points)

The term “Unutilized Commitment” as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day. The term “Rating” as used in this Section 1.1 shall mean the lowest long-term unenhanced debt ratings assigned by S&P to Parity Debt. Any change in the Undrawn Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings above are references to rating categories as presently determined by S&P and in the event of adoption of any new or changed rating system by the Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of Parity Debt issued by or on behalf of the Borrower in connection with the adoption of a “global” rating scale, each of the ratings from S&P in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The Borrower agrees that as of the Closing Date, the Undrawn Fee Rate is that specified above for Level 1. Upon the occurrence and during the continuance of an Event of Default, the Undrawn Fee Rate shall immediately increase by 1.50% per annum over the Undrawn Fee Rate that would otherwise be applicable. In the event any rating as described above is suspended, withdrawn, or otherwise unavailable, the Undrawn Fee Rate shall be the Undrawn Fee Rate specified for Level 5. The Undrawn Fee shall be payable quarterly in arrears, together with interest on the Undrawn Fees from the date payment is due until payment in full at the Default Rate. Such Undrawn Fees shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

Section 1.2. Amendment Waiver or Consent Fees. Borrower agrees to pay to Lender on the date on which Borrower requests from Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of \$5,000, plus, in each case, the reasonable fees and expenses of legal counsel to Lender.

Section 1.3. Termination Fee; Reduction Fee. (a) Borrower hereby agrees to pay to Lender a termination fee in connection with any termination of the Commitment by Borrower prior to the first anniversary of the Closing Date, in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such termination, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit, or LC Disbursements) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the first anniversary of the Closing Date, and the denominator of which is 360 (the “Termination Fee”), which Termination Fee shall be paid on or before the date of such

termination. No termination in full of the Commitment shall become effective unless and until all amounts payable by Borrower to Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.5(a)) have been paid in full.

(b) Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Closing Date prior to the first anniversary of the Closing Date, without the payment by Borrower to Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such permanent reduction (without regard to any outstanding Loans, Letters of Credit, or LC Disbursements), (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to but not including the first anniversary of the Closing Date, and the denominator of which is 360. Under no circumstances shall Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction Borrower reduces the Revolving Credit Exposure so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

Section 1.4. Applicable Margin. As used in the Agreement and this Fee Agreement, the “Applicable Margin” means the applicable rate per annum under the caption “Applicable Margin” for Revolving Loans as set forth below, in each case, corresponding to the Minimum Amount set forth in the applicable Level as the case may be from time to time:

LEVEL	S&P RATING	APPLICABLE MARGIN
Level 1	A or above	1.40% (140 basis points)
Level 2	A-	1.50% (150 basis points)
Level 3	BBB+	1.65% (165 basis points)
Level 4	BBB	1.85% (185 basis points)
Level 5	Below BBB	3.35% (335 basis points)

The term “*Rating*” as used in this Section 1.4 shall mean the lowest long-term unenhanced debt ratings assigned by S&P to Parity Debt. Any change in the Applicable Margin resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings above are references to rating categories as presently determined by the Rating Agency and in the event of adoption of any new or changed rating system by S&P, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of Parity Debt issued by or on behalf of the Borrower in connection with the adoption of a “global” rating scale, each of the ratings from S&P in question referred to above shall be deemed to refer to the rating category under the new rating system which

most closely approximates the applicable rating category as currently in effect. The Borrower agrees that as of the Closing Date, the Applicable Margin is that specified above for Level 1. Upon the occurrence and during the continuance of an Event of Default, the Applicable Margin shall immediately increase by 1.50% per annum over the Applicable Margin that would otherwise be applicable. In the event any rating as described above is suspended, withdrawn, or otherwise unavailable, the Applicable Margin shall be the Undrawn Fee Rate specified for Level 5. The Undrawn Fee shall be payable quarterly in arrears, together with interest on the Undrawn Fees from the date payment is due until payment in full at the Default Rate. Such Undrawn Fees shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

Section 1.5. Default Rate. For purposes of this Fee Agreement and the Agreement, “Default Rate” means, with respect to any Loans and Letters of Credit, the then applicable Base Rate plus two percent (2.00%).

Section 1.6. Letter of Credit Fees. Borrower agrees to pay to Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the “LC Termination Date”), quarterly in arrears on the first Business Day of each January, April, July and October to the LC Termination Date, and on the LC Termination Date (each, a “LC Payment Date”), a non-refundable undrawn fee (the “LC Facility Fee”) in an amount equal for each day during such calculation period to the product of (x) the Applicable Margin, (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The LC Facility Fee shall be calculated from and including one LC Payment Date (or, in the case of the initial LC Facility Fee payment in respect of a Letter of Credit, the date such Letter of Credit is issued) to but excluding the next LC Payment Date (each, a “LC Payment Period”), and Lender shall provide Borrower with an invoice for each LC Facility Fee; *provided, however*, that the failure of Lender to do so shall not relieve Borrower from its obligation to pay such LC Facility Fee.

Section 1.7. Issuance Fees. Borrower agrees to pay to Lender a non-refundable fee of 25 basis points of the stated amount for each issuance of a Letter of Credit, which fee shall be earned on the issuance date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date).

ARTICLE II

MISCELLANEOUS

Section 2.1. Legal Fees. On the Closing Date, Borrower shall pay the reasonable legal fees and expenses of Lender incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Basic Documents in an amount equal to [\$ _____] plus disbursements.

Section 2.2. Amendments. No amendment to this Fee Agreement will become effective without the prior consent of Borrower and Lender, which consent must be in writing and signed by Lender and an Authorized Representative of Borrower.

Section 2.3. Governing Law. THIS FEE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

Section 2.4. Counterparts. This Fee Agreement may be executed in counterparts in accordance with Section 7.11 of the Agreement, which Section 7.11 is incorporated herein by reference.

Section 2.5. Severability. Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[Signature Pages To Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

MUFG UNION BANK, N.A.

By: _____
Name: Jacob Ulevich
Title: Director

RESOLUTION NO. R-2022-__
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EBCE AUTHORITY APPROVING AND AUTHORIZING
THE EXECUTION AND DELIVERY OF A NEW REVOLVING CREDIT AGREEMENT WITH
MUFG UNION BANK

WHEREAS, The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020; and

WHEREAS, EBCE currently has a Revolving Credit Agreement (the “Existing Agreement”) in place with Barclays Bank PLC, which such Existing Agreement is set to expire in December 2022; and

WHEREAS, EBCE sent its Request for Proposals for East Bay Community Energy Authority Revolving Credit Agreement Services to qualified lenders to replace the Existing Agreement and has selected MUFG Union Bank, N.A. (“MUFG”) as having the response best addressing EBCE’s needs to replace the Existing Agreement; and

WHEREAS, there has been presented at this meeting a proposed form of Revolving Credit Agreement (“Revolving Credit Agreement”) and a Fee Agreement (the “Fee Agreement”) to be entered into by EBCE and MUFG; and

WHEREAS, in compliance with Government Code Section 5852.1, EBCE has obtained from PFM Financial Advisors LLC the certain required good faith estimates, and such estimates have been disclosed at this meeting in the Staff Report accompanying this Resolution; and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the entry into the Revolving Credit Agreement and the Fee Agreement authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Board of Directors is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize the execution of the Revolving Credit Agreement and the Fee Agreement for the purposes, in the manner and upon the terms provided; and

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EBCE AUTHORITY
DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The Board of Directors (“Board”) hereby specifically finds and declares that the statements, findings and determinations of EBCE set forth above are true and correct, and the Board hereby authorizes entry into the Revolving Credit Agreement and the Fee Agreement permitting borrowings thereunder not to exceed \$200,000,000 outstanding at any time and for an initial borrowing term not to exceed three (3) years for the purposes set forth above.

Section 2. The proposed forms of the Revolving Credit Agreement and the Fee Agreement presented to this meeting and on file with the Secretary are hereby approved, and the Chief Executive Officer is hereby authorized and directed, for and in the name and on behalf of EBCE, to execute and deliver to MUFG the Revolving Credit Agreement and the Fee Agreement in substantially said forms, with such changes thereto as the Chief Executive Officer, after consultation with other appropriate officers of the Board or EBCE, including, but not limited to, the Chief Operating Officer (each such officer, an “Authorized Representative”) and counsel, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Board hereby approves each Authorized Representative, acting singly, to borrow and authorize advances or the issuance of letters of credit from time to time under the Revolving Credit Agreement in such amounts as in their judgment should be borrowed and to provide security for the obligations of EBCE under the Revolving Credit Agreement, including, without limitation, a pledge of the net revenues of EBCE, and to execute and deliver any requests or other documents and agreements as such Authorized Representative may, in her or his discretion, deem reasonably necessary or proper in order to carry into effect the provisions of the Revolving Credit Agreement.

Section 4. The Chief Executive Officer and the Secretary of the Board, and any other Authorized Representative, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of EBCE, to execute and deliver any and all documents, certificates, representations, and Agreements as they, with the advice of counsel, shall approve, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Board has approved in this Resolution.

Section 5. All actions heretofore taken by the officers and agents of the Board or EBCE with respect to the Revolving Credit Agreement and the Fee Agreement are hereby ratified, confirmed, and approved.

Section 6. This Resolution shall take effect immediately upon its adoption.

ADOPTED AND APPROVED this 21ST day of September, 2022.

Dianne Martinez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board