



MCE Executive Committee Meeting  
Monday, May 4, 2026  
12:00 p.m.

1125 Tamalpais Avenue  
San Rafael, CA 94901

2300 Clayton Road, Suite 1500  
Concord, CA, 94520

*Public comments may be made in person or remotely via the details below.*

**Remote Public Meeting Participation**

Video Conference: <https://t.ly/DnY7U>

Phone: Dial (669) 900-9128, Meeting ID: 861 2234 3784, Passcode: 415565

*Materials related to this agenda are available for physical inspection at MCE's offices in San Rafael at 1125 Tamalpais Avenue, San Rafael, CA 94901 and in Concord at 2300 Clayton Road, Suite 1500, Concord, CA 94520.*

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3672 or [ada-coordinator@mceCleanEnergy.org](mailto:ada-coordinator@mceCleanEnergy.org) at least 72 hours before the meeting start time to ensure arrangements are made.

Agenda Page 1 of 2

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C. 1. Approval of 4.6.26 Meeting Minutes
  - C.2. Review Draft 5.21.26 Board Agenda
6. Credit Facility Extension (Discussion/Action)

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7. Agenda and Packet Management Technology: Challenges & Opportunities (Discussion)
8. Committee & Staff Matters (Discussion)
9. Adjourn

*The Executive Committee may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.*

**DRAFT**

**MCE EXECUTIVE COMMITTEE MEETING MINUTES**

**Monday, April 6, 2026**

**12:00 P.M.**

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**Present:** Stephanie Andre, City of Larkspur  
Barbara Coler, Town of Fairfax, Chair  
Cindy Darling, City of Walnut Creek  
Maika Llorens-Gulati, City of San Rafael  
Devin Murphy, City of Pinole, joined at 12:14 p.m.  
Laura Nakamura, City of Concord  
Beth Painter, City of Napa, left at 1:37 p.m.  
Max Perrey, City of Mill Valley  
Shanelle Scales-Preston, County of Contra Costa, left at 2:03 p.m.  
Sally Wilkinson, City of Belvedere

**Absent:** Kari Birdseye, City of Benicia

**Staff**

**& Others:**

Jared Blanton, VP of Public Affairs  
Jesica Brooks, Lead Board Clerk and Executive Assistant  
Vicken Kasarjian, Chief Operating Officer  
Tanya Lomas, Board Clerk  
Linda Lye, Senior Legal Counsel  
Lindsay Meehan, Director of Human Resources  
Catalina Murphy, General Counsel  
Ashley Muth, Internal Operations Associate  
Justine Parmelee, VP of Internal Operations  
Mike Rodriguez-Vargas, Internal Operations Assistant  
Enyonam Senyo-Mensah, Manager of Internal Operations  
Dan Settlemeyer, Internal Operations Associate  
Jamie Tuckey, Chief Customer Officer  
Dawn Weisz, Chief Executive Officer

**1. Roll Call**

Chair Coler called the regular Executive Committee meeting to order at 12:00 p.m. with quorum established by roll call.

Action: It was M/S/C (Darling/Llorens-Gulati) **to move Consent Calendar item C.2 after Closed Session.** Motion carried by unanimous roll call vote. (Absent: Birdseye).

## DRAFT

### **2. Board Announcements (Discussion)**

There were no comments.

### **3. Public Open Time (Discussion)**

There were no comments.

### **4. Report from Chief Executive Officer (Discussion)**

Dawn Weisz, Chief Executive Officer, introduced this item.

Chair Coler opened the public comment period and there were no comments.

### **5. Consent Calendar (Discussion/Action)**

C.1 Approval of 3.2.26 Meeting Minutes

Chair Coler opened the public comment period and there were no comments.

Action: It was M/S/C (Llorens-Gulati/Scales-Preston) to **approve Consent Calendar item C.1**. Motion carried by unanimous roll call vote. (Absent: Birdseye and Murphy).

### **6. Proposed Master Scheduling Coordinator Services Agreement with Customized Energy Solutions for CAISO Scheduling Services (Discussion/Action)**

CB Hall, Director of Power Resources, presented this item and addressed questions from Committee members.

Chair Coler opened the public comment period and there was a comment from member of the public, Alicia Minyen.

Action: It was M/S/C (Perrey/Murphy) to **Approve the proposed first agreement with Customized Energy Solutions for CAISO scheduling services. Motion carried by unanimous roll call vote.** (Absent: Birdseye).

### **7. Committee & Staff Matters (Discussion)**

There were no comments.

### **8. Public Open Time on Closed Session Matter (Discussion)**

There were no comments.

**Begin Closed Session** Chair Coler opened the closed session at 12:48 p.m.

**DRAFT**

**Return to Open Session** Chair Coler returned to open session at 2:47p.m. and quorum was established by roll call vote.

**5. Consent Calendar (Discussion/Action)**

C.2 Review Draft 4.16.26 Board Agenda

Chair Coler opened the public comment period and there were no comments.

Action: It was M/S/C (Murphy/Perrey) to <b>approve Consent Calendar item C.2.</b> Motion carried by unanimous roll call vote. (Absent: Birdseye, Llorens-Gulati, Painter, and Scales-Preston).
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**9. Adjournment**

Chair Coler adjourned the meeting at 2:51 p.m. to the next scheduled Executive Committee Meeting on May 4, 2026.

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**Barbara Coler, Chair**

**Attest:**

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**Dawn Weisz, Secretary**



MCE Board of Directors Meeting  
Thursday, May 21, 2026  
6:30 p.m.

1125 Tamalpais Avenue  
San Rafael, CA 94901

2300 Clayton Road, Suite 1500  
Concord, CA, 94520

*Public comments may be made in person or remotely via the details below.*

**Remote Public Meeting Participation**

Video Conference: <https://t.ly/mlv5w>

Phone: Dial (669) 900-9128, Meeting ID: 890 0487 7785, Passcode: 525690

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1. Approval of 3.19.26 Meeting Minutes

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- C.2. Approval of 4.16.26 Meeting Minutes
  - C.3 Addition of Board Members to Committees
  - C.4 Voting Shares Update
  - 6. Credit Facility Extension (Discussion/Action)
  - 7. RFP Results for Government Assessment Services (Discussion/Action)
  - 8. Board & Staff Matters (Discussion)
  - 9. Adjourn
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### Informational Reports

- I.1 Approved Contracts for Energy Update
- I.2 Legislative and Regulatory Updates
- I.3 Quarterly Customer Participation Report
  - 1. YOY Comparison of Opt-Outs
  - 2. Monthly Net Customer Changes and Revenue Impact
  - 3. Monthly Active Customer Load Trend
  - 4. Customer Flows 2025-2026



May 4, 2026

TO: MCE Executive Committee  
FROM: Maíra Strauss, Chief Financial Officer  
RE: Credit Facility Extension (Agenda Item #06)  
ATTACHMENT: Revolving Credit Agreement with the Royal Bank of Canada (dated May 24, 2023)

Dear Executive Committee Members:

**Summary:**

Due to the upcoming expiration of the current Revolving Credit Agreement with the Royal Bank of Canada (“RBC”) on May 24, 2026, staff recommends:

- Approval to extend the current credit agreement to provide time for staff to survey the bank market to determine if there are more competitive credit facility options available to best meet MCE’s financial objectives.
- An increase of the RBC facility limit from \$60 million to \$80 million to address potential increases to the Financial Stability Reserve (FSR) requirement.

Staff expects to receive several proposals in an upcoming Request for Proposals (“RFP”) process given the long-term operating and financial success of MCE and stable Community Choice Aggregators (CCAs) in California.

**Background:**

MCE’s existing credit facility provides access to a \$60 million line of credit, which strengthens the agency’s liquidity position. Rating agencies count this committed credit line toward MCE’s days cash on hand calculations, helping to support and improve MCE’s credit ratings. The facility also gives MCE flexibility when working with counterparties by allowing the agency to post letters of credit in lieu of cash collateral which preserves cash reserves. Similarly, it can be used to post a letter of credit to satisfy the Financial Stability Reserve (FSR) requirement. The FSR is required by the California Public Utilities Commission (CPUC) and is meant to ensure community choice aggregators (CCAs) can cover potential reentry fees if their customers involuntarily return to PG&E service. This requirement changes with market conditions and could increase to over \$70 million during calendar year 2026.

**Overview of the Extension of the Current Credit Agreement:**

Staff has negotiated an agreement in principle with RBC on a one-year extension of the current agreement with RBC, extending the term through May 21, 2027, and increasing the limit from \$60

million to \$80 million. The proposed increased credit limit would provide MCE with additional flexibility should the FSR posting requirement materialize at the high end. Market volatility and the FSR's sensitivity to changes in market prices could mean a range from the minimum FSR amount up to over \$70 million for calendar year 2026. MCE finance and legal staff are working, with support from MCE's municipal advisor, Montague DeRose and Associates ("MDA"), and outside counsel, to finalize the terms of the extension with RBC. It is expected that the formal extension agreement, extending the term through May 21, 2027 and increasing the credit limit from \$60 million to \$80 million, will be presented to your Board for consideration at the May 21, 2026 Board meeting.

**Overview of the Upcoming RFP Process and Bank Selection Criteria:**

Staff intends to issue an RFP during the extension period, to promote competition, ensure robust due diligence, and uphold our fiduciary obligation to obtain the most advantageous terms for the agency. The process will inform selection of the optimal banking partners for a new credit facility. The RFP process would assist the Board with price transparency and provide an examination of the experience and qualifications of various providers. Previously, RBC was selected through a competitive RFP process issued on September 9, 2022, which solicited proposals for a general-purpose credit facility in a minimum amount of \$40 million and up to a maximum of \$60 million for a term of at least three years. The RFP was sent to fifteen banks who met a set of financial and environmental criteria developed internally and in coordination with MCE's municipal advisor, MDA.

In the upcoming RFP, the criteria for banks could include the following:

- Minimum net assets totaling \$25 billion.
- Long-term ratings at least equivalent to A2 and A from two nationally recognized credit rating agencies.
- Commitment to environmental sustainability.
- Other financial strength requirements.

After receiving the responses, Staff, along with its municipal advisor MDA, would analyze the providers' most recent financial statements to collect information on net assets, credit ratings, and overall financial strengths to select banks commensurate with MCE's strong financial standing. Due to MCE's stringent financial criteria, the list of responses could likely come from large multi-national banks.

Importantly, most of the banks expected to be on MCE's future RFP list are also actively engaged in financing the transition away from fossil fuels and greenhouse gas emitting industries. At the same time, several of these institutions have faced sanctions from states with significant oil, gas, and coal interests, such as Texas, Oklahoma, and West Virginia, due to their efforts to reduce or eliminate fossil fuel financing. Consequently, the universe of financial institutions that both meet MCE's stringent financial criteria and align with MCE's mission, while also demonstrating an interest in providing credit to the CCA industry, is particularly limited.

On or before September 30, 2026, MCE would assess the proposals received. Each proposal would be reviewed using an evaluation matrix that compares the product overview, fee schedules, and pricing. Consideration would also be given to the banks' responses to environmental sustainability commitments.

MCE Staff, with assistance from MCE's municipal advisor and outside counsel, would negotiate a new three-year Revolving Credit Agreement with the selected bank. The new agreement would replace MCE's Revolving Credit Agreement with RBC, which is scheduled to expire on May 24, 2026 and proposed to be extended to May 21, 2027. The future three-year agreement selected through the RFP process could increase the amount of the credit facility, allow MCE to borrow additional funds if needed, and permit the issuance of letters of credit to support power purchase contracts.

**Fiscal Impact:**

The annual cost of MCE's existing Revolving Credit Agreement is 0.33% of the facility limit, or \$264,000 based on the increased limit, representing the lowest credit facility fee MCE has incurred to date. Staff successfully negotiated the proposed increase in the facility from \$60 million to \$80 million with no associated fee rate increase. Additional costs would be incurred only if MCE borrows under the facility or issues letters of credit. The approved FY 2026/27 budget includes funding for the agreement under Non-Operating Expenses and provides sufficient capacity to accommodate the proposed one-year extension.

**Recommendation:**

Recommend that the Executive Committee recommend to the Board of Directors approval of a one-year extension of the current RBC credit facility, extending the term through May 21, 2027, and increasing the credit limit to \$80 million.

EXECUTION COPY

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**REVOLVING CREDIT AGREEMENT**

**Dated as of May 24, 2023,**

**by and between**

**MARIN CLEAN ENERGY,**

**as Borrower**

**and**

**ROYAL BANK OF CANADA,**

**as Lender**

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## REVOLVING CREDIT AGREEMENT

This **REVOLVING CREDIT AGREEMENT**, dated as of May 24, 2023 (together with all amendments and supplements hereafter, this "*Agreement*") is by and between MARIN CLEAN ENERGY, 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 ROYAL BANK OF CANADA (together with its successors and 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, the Borrower and the Lender agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.01. Definitions.** As used in this Agreement:

"*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.

"*Alternate Base Rate*" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day plus 1.00%, (b) the Federal Funds Effective Rate in effect on such day plus 2.00%; (c) Term SOFR for a one-month tenor in effect for such day plus 1.00% and (d) 8.00%; *provided* that to the extent such highest rate as calculated above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, respectively.

"*Amortization Amount*" shall have the meaning assigned to such term in Section 2.07(d).

"*Amortization End Date*" means the first to occur of (a) as to each Amortization Amount, the third anniversary of the beginning of the Amortization Period related to such Amortization Amount and (b) the date upon which an Event of Default shall occur and the Lender exercises the remedy of acceleration in accordance with Section 6.02.

"*Amortization Interest Payment Date*" means the first Business Day of each month and the Amortization End Date.

"*Amortization Period*" shall have the meaning assigned to such term in Section 2.07(d).

"*Amortization Principal Payment*" shall have the meaning assigned to such term in Section 2.07(d).

*“Amortization Principal Payment Date”* means (a) the first Business Day of each January, April, July and October that occurs during an Amortization Period commencing with the first such date that occurs at least 90 days after the beginning of the Amortization Period and (b) the Amortization End Date.

*“Annual Debt Service”* means the total amount of Debt Service payable on or, with respect to future periods, expected to be payable on, System Debt in any Fiscal Year or other designated twelve consecutive calendar month period.

*“Anti-Corruption Laws”* means all laws, rules, and regulations of any jurisdiction applicable to the 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 4.06.

*“Authorized Representative”* means any individual designated from time to time as an “Authorized Representative” in a certificate executed by the secretary or an assistant secretary of the Borrower and delivered to the Lender.

*“Available Commitment”* means, at any time, an amount equal to (a) the Commitment less (b) the sum of the principal amount of all Loans then outstanding plus the LC Exposure.

*“Availability Period”* means the period from and including the Closing Date to but excluding the earlier of (a) the Maturity Date and (b) the date of termination of the Commitment pursuant to Section 2.06 or Section 6.02.

*“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 clause (f) of Section 2.11.

*“Bank Agreement”* means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to or to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Borrower secured by or payable from Revenues (including Net Revenues) on parity with, or subordinate to the payment of, the Obligations.

*“Bank Rate”* means, for any day during any Amortization Period, a rate per annum equal to (a) for the first 90 days of such Amortization Period the Alternate Base Rate and (b) beginning on the 91<sup>st</sup> day of such Amortization Period until the end of the Amortization Period, the Alternate Base Rate plus 2.00%, subject in each case to Section 2.10(d).

“*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 1.00%, (b) the Federal Funds Effective Rate in effect on such day plus 2.00%; and (c) Term SOFR for a one-month tenor in effect for such day plus 1.00%; *provided* that to the extent such highest rate as calculated above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, respectively.

“*Base Rate Borrowing*” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest based upon the Base Rate.

“*Base Rate Loan*” means any Loan that bears interest based upon the Base Rate.

“*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 exhibits hereto and (b) the Fee Agreement.

“*Benchmark*” means, initially, Term SOFR for Term SOFR Loans and Daily Simple SOFR for Daily Simple SOFR Loans; *provided* that if a Benchmark Transition Event has occurred with respect to Term SOFR or Daily Simple SOFR, as applicable, or the then-current Benchmark, then “*Benchmark*” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) of Section 2.11.

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

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Lender and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) 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 (ii) the related Benchmark Replacement Adjustment.

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

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

Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated credit facilities at such time.

“*Benchmark Replacement Date*” means, a date and time determined by the Lender, which date shall be no later than, with respect to any Benchmark, the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; *provided*, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

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

“*Benchmark Unavailability Period*” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date 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 2.11 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.11.

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

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

“*Borrowing*” means the making, conversion or continuation of a Loan.

“*Borrowing Request*” means a request by the Borrower for a Borrowing in accordance with Section 2.03 and in the form of Exhibit C 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 are authorized or required by law to remain closed; *provided that*, when used in connection with a SOFR Loan, or any other calculation or determination involving SOFR, the term “Business Day” means any day which is a U.S. Government Securities Business Day.

“*Cash Collateral Account*” has the meaning set forth in Section 6.03.

“*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 the Lender (or, for purposes of Section 2.12(b), by any lending office of the 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 the 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 3.01 hereof are satisfied and/or waived in writing by the Lender.

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

“*Collateralization Date*” means the date determined in accordance with Section 6.02.

“*Collateralization Requirement*” means the requirement that the Borrower deliver U.S. Dollars to the Lender for deposit in the Cash Collateral Account and maintain the amount therein equal to 105% of the sum of the stated amount of all Letters of Credit outstanding.

“*Commitment*” means the commitment of the Lender to make Loans, as such commitment may be reduced from time to time pursuant to Section 2.06 or Section 6.02. The amount of the Commitment on the Closing Date is \$60,000,000.

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

“*Conforming Changes*” means, with respect to either the use or administration of Term SOFR or Daily Simple SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (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 2.11 and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Lender decides is 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.

“*Consulting Engineer*” means the engineer, engineering firm or consulting firm retained from time to time by Borrower to provide independent analysis and planning advice regarding the business strategy and operations of Borrower.

“*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.

“*Daily Simple SOFR*” means, for any day (a “*SOFR Rate Day*”), a rate per annum equal to SOFR for the day (such day, the “*SOFR Determination Day*”), that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; *provided, however*, that if as of 5:00 p.m. (New York City time) on any SOFR Determination Day Daily Simple SOFR for the applicable tenor has not been published by the SOFR Administrator and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then Daily Simple SOFR will be Daily Simple SOFR as published by the SOFR Administrator on the first preceding U.S. Government Securities Business Day for which Daily Simple SOFR was published by the 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 SOFR Determination Day; *provided*, that to the extent such rate as determined above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein.

*“Daily Simple SOFR Borrowing”*, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest based upon the Daily Simple SOFR.

*“Daily Simple SOFR Loan”* means any Loan that bears interest based upon the Daily Simple SOFR.

*“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 Contract 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 Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

*“Debt Service”* means, with respect to any System Debt, as of any date of calculation and any designated period, the sum of all principal, interest and fees (including facility fees, letter of credit fees, undrawn fees and commitment fees) due and payable on such System Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such period; *provided that*:

(a) With respect to any System Debt that is subject to an interest rate Swap Contract which (i) will be in place throughout the designated period and (ii) is provided by a counterparty that is currently assigned a long-term rating of at least A2 or A by Fitch, Moody’s or S&P and who is not in default of its obligations under such Swap Contract, the interest rate used to calculate projected Annual Debt Service with respect to such System Debt shall be the interest rate payable by the Borrower under such Swap Contract; and

(b) With respect to System Debt that (i) bears a variable rate of interest that is not subject to a Swap Contract described in subparagraph (a) above or (ii) that bears a fixed rate of interest and is subject to a Swap Contract described in subparagraph (a) above, the rate of interest used to calculate projected Annual Debt Service on such System Debt shall be the average rate of interest borne by such System Debt (or in the case of System Debt described in clause (ii) of this subparagraph (b), that is payable by the Borrower under such Swap Contract) during the year preceding the date of calculation or, if such System Debt has been outstanding for less than a year, during the period such Debt has been outstanding.

*“Debt Service Coverage Ratio”* means, for any fiscal year of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for (i) the twelve consecutive month period ended on the last day of such fiscal year and (ii) the twelve consecutive month period following the last day of such fiscal year. For purposes of the foregoing clause (ii) Net Revenues may be adjusted to reflect Revenues reasonably expected to be generated during the relevant period pursuant to rates and charges that have been adopted by an approved rate action and are not subject to further authorization, approval or consent.

*“Debt Service Coverage Ratio Notice”* has the meaning set forth in Section 5.01(p) 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*” means a per annum rate of interest equal to the Alternate Base Rate plus 4.00%.

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

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

“*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 the 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 6.01 hereof

“*Excluded Taxes*” means, with respect to the 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 the 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 the 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 per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided*, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to the Lender on such day on such transactions as determined by Lender; *provided* that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

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

“*Fee Agreement*” means the Fee Agreement of even date herewith between the Borrower and the Lender, as supplemented and amended from time to time.

“*Fiscal Year*” means each twelve-month period commencing on April 1 of a calendar year and ending on March 31 of the following calendar year.

“*Fitch*” means Fitch Ratings, Inc.

“*Floor*” means the benchmark rate floor, if any, provided in this Agreement. For the avoidance of doubt, the initial Floor shall be 0.00%.

“*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.

“*Illegality Notice*” shall have the meaning set forth in Section 2.19.

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

“*Interest Election Request*” means a request by the Borrower, in the form of Exhibit D hereto, to convert or continue a Loan in accordance with Section 2.05.

“*Interest Payment Date*” means, (a) with respect to any Base Rate Loan or Daily Simple SOFR Loan, the first Business Day of the month, and (b) with respect to any Term SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and, if such Interest Period is longer than three months, at three-month intervals following the first day of any such Interest Period.

“*Interest Period*” means, in respect of each Term SOFR Loan, a period of one, three or six months; *provided that* (i) the Interest Period shall commence on the date of an advance of or a conversion to a Term SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period

shall commence on the date on which the next preceding Interest Period expires; (ii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; *provided*, that if any Interest Period with respect to a Term SOFR Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iii) any Interest Period with respect to a Term SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is not numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period; (iv) no Interest Period shall extend beyond the Maturity Date; and (v) no tenor that has been removed from this definition pursuant to Section 2.11 shall be available for specification in such Borrowing Request or interest election.

*“Issuance Date”* means, with respect to each Loan, the date on which such Loan is to be disbursed as specified in the related Borrowing Request and in compliance with the terms hereof and, with respect to each Letter of Credit, the date on which the Letter of Credit is to be issued as specified in the related Letter of Credit Request and in compliance with the terms hereof.

*“Investment Policy”* means the investment guidelines of the Borrower as in effect on the date hereof, as such investment guidelines may be 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 19, 2008, and as amended from time to time.

*“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 Disbursement”* means a payment made by the 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 for which the Lender has not been reimbursed.

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

*“Letter of Credit Request”* means a written notice from the Borrower to the Lender requesting that the Lender issue a Letter of Credit hereunder, such written notice to be in the form of Exhibit E hereto.

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

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

*“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 the loans made by the Lender to the Borrower pursuant to this Agreement, including, without limitation, Base Rate Loans, Daily Simple SOFR Loans and Term SOFR Loans.

*“Material Adverse Effect”* means (a) a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the 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 4.05.

*“Maturity Date”* means the date on which the Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on the third anniversary of the Closing Date (i.e., May 24, 2026), or such later date to which the Maturity Date may be extended pursuant to Section 2.17 and, if any such date is not a Business Day, the next preceding Business Day.

*“Maximum Lawful 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.

*“Maximum Rate”* means the lesser of 15.00% per annum and the Maximum Lawful Rate.

*“Moody’s”* means Moody’s Investors Service, Inc.

*“Net Revenues”* means, for any period and as of any date of determination, the amount Revenues remaining after payment of Operating and Maintenance Costs paid from Revenues, in each case for such period as of such date.

*“Obligations”* means all obligations of the Borrower to the Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including, without limitation, repayment of Loans, Amortization Amounts and LC Disbursement with interest as provided herein, payment of fees and reimbursement for cost and expenses.

*“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 and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, 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, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and the Consulting Engineer, 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 take or pay contracts.

*“Operating Reserve Account”* means the deposit account established by the Borrower with River City Bank entitled the Operating Reserve Account.

*“Operating Reserve Account Requirement”* means an amount equal to \$15,000,000.

“*Operating Reserve Fund*” means the rate stabilization reserve fund established by the Borrower to provide a reserve, funded from excess Revenues in prior fiscal years, that can be utilized by the Borrower for any purpose for which current fiscal year Revenues are insufficient.

“*Other Connection Taxes*” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned or participated 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 System Debt issued or incurred by the Borrower the payment of which is on parity with the Borrower’s payment Obligations under this Agreement and shall include the Loans.

“*Participant*” has the meaning set forth in Section 7.03(b) hereof

“*Participation*” has the meaning set forth in Section 7.03(b) hereof.

“*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 a power purchase agreement executed between the Borrower and a PPA Counterparty.

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

“*Prime Rate*” means the rate of interest per annum publicly determined by Royal Bank of Canada from time to time as its prime commercial lending rate for United States Dollar loans in the United States for such day. The Prime Rate is not necessarily the lowest rate that Royal Bank of Canada is charging any corporate customer.

“*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.

“*Rating Agency*” and “*Rating Agencies*” means, individually or collectively, as applicable, any nationally recognized rating agency (such as Fitch, Moody’s and S&P) that has provided and is maintaining a rating on any long-term unenhanced System Debt.

“*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 Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“*Revenues*” means all income and revenue derived by the Borrower from any source whatsoever except for any income or revenue of the Borrower which the Borrower is prohibited from pledging to secure the payment of System Debt by operation of applicable Law, and shall include amounts on deposit in the Operating Reserve Fund.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

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

“*Senior Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is senior to the payment in full of the Borrower’s payment Obligations under this Agreement.

“*SOFR*” means a rate per annum 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).

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

“*SOFR Determination Day*” has the meaning set forth in the definition of “Daily Simple SOFR”.

“*SOFR Loan*” means any Daily Simple SOFR Loan or Term SOFR Loan.

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

“*State*” means the State of California.

“*Subordinate Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is expressly subordinate to the payment in full of the Borrower’s payment Obligations under this Agreement and under any other Parity Debt.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

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

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) 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.

“*System Debt*” means Debt of the Borrower secured by a Lien on Revenues, including Net Revenues.

“*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 SOFR*” means, for any Interest Period for a Term SOFR Loan, the greater of (a) the Term SOFR Reference Rate (rounded upward to the next one-sixteenth (1/16<sup>th</sup>) of one percent (0.0625%), if necessary) for a tenor comparable to the applicable Interest Period on the day (the “*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 and (b) the Floor; *provided, however,* that if as of 5:00 p.m. (New York City time) on any 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 Term SOFR Determination Day.

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

“*Term SOFR Borrowing*”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest based upon Term SOFR.

“*Term SOFR Determination Day*” has the meaning assigned to it under the definition of Term SOFR.

“*Term SOFR Loan*” means a Loan that bears interest at a rate based upon Term SOFR, other than pursuant to clause (iii) of the definition of “Base Rate”.

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

*“2022 Audited Financial Statements”* means the statements of net position of the System on March 31, 2022 and March 31, 2021, the statements of revenues, expenses and changes in net position of the System for the years ended March 31, 2022 and March 31, 2021, and the statements of cash flows of the System for the years ended March 31, 2022 and March 31, 2021, together with unqualified audit opinion of Baker Tilly US, LLP.

*“Type”*, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Daily Simple SOFR, Term SOFR (other than pursuant to clause (iii) of the definition of *“Alternate Base Rate”* or *“Base Rate”*) or the Base Rate.

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

*“U.S. Government Securities Business Day”* means any day except for (i) a Saturday, (ii) a Sunday or (iii) 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 1.02. 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 and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement and (e) 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 1.03. 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 the Borrower notifies the Lender that the 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 the 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 1.04. Interest Rates; Benchmark Notifications.** The interest rate on a Loan may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the

subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.11 provides a mechanism for determining an alternative rate of interest. The Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, the administration of, submission of, calculation of, performance of or any other matter related to any interest rate used in this Agreement (including, without limitation, the Base Rate, Daily Simple SOFR, Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Term SOFR or Term SOFR) or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same value or economic equivalence of as the existing interest rate (or any component thereof) being replaced or have the same volume or liquidity as did any existing interest rate (or any component thereof) prior to its discontinuance or unavailability. The Lender and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate (or component thereof) used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Lender may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referred to in the definition thereof, 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 II

### THE CREDITS

**Section 2.01. Commitments.** Subject to the terms and conditions set forth herein, the Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that does not exceed the Available Commitment on the Issuance Date for such Loan, taking into account all Loans made, Letters of Credit issued, unreimbursed LC Disbursements made and the repayment of the principal of outstanding Loans and LC Disbursements on such Issuance Date. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

#### **Section 2.02. Loans and Borrowings.**

(a) Subject to Section 2.04(d) and Section 2.11, at the time of each Borrowing, the Borrower may elect to incur a Loan as a Base Rate Loan, a Daily Simple SOFR Loan or a Term SOFR Loan.

(b) At the commencement of each Interest Period for any Term SOFR Loan, such Loan shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the time that each Daily Simple SOFR Borrowing is made or any Loan is converted to a Daily Simple SOFR Loan, such Borrowing or Loan shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the time that each Base Rate Borrowing is made or any Loan is converted to a Base Rate Loan, such Borrowing or Loan shall be in an aggregate amount that is an integral multiple of \$50,000 and not less than \$200,000.

(c) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Term SOFR Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

**Section 2.03. Requests for Loans.** To request a Borrowing, the Borrower shall notify the Lender of such request by delivery of Borrowing Request (a) in the case of a Term SOFR Borrowing or Daily Simple SOFR Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the applicable Issuance Date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the applicable Issuance Date of the proposed Borrowing. Each such Borrowing Request shall be executed by Authorized Representatives and, once delivered to the Lender, shall be irrevocable.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Term SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Subject to satisfaction of the terms and conditions of Section 3.02, the Lender shall make available to, or for the account of, the Borrower, pursuant to the disbursement instructions set for the in the related Borrowing Request, the amount of each Borrowing no later than 2:00 p.m., New York City time, on the applicable Issuance Date.

Notwithstanding the forgoing provisions in this Section 2.03 and the provisions of Section 2.04(a), after the Borrower submits a Borrowing Request or a Letter of Credit Request, the Lender may, not later than 4:00 p.m., New York City time, on the date that is one (1) Business Day prior to the date the requested Loan is to be advanced or the requested Letter of Credit is to be issued, as applicable, deliver a written notice to the Borrower of its intention to fund the related Loan ( the "*Delayed Loan*") or issue the related Letter of Credit (the "*Delayed Letter of Credit*") on a date (the date of such funding or issuance, as applicable, the "*Delayed Issuance Date*") that is on or before the thirty (30th) day following the date specified in such Borrowing Request as the Issuance Date for the Loan requested or specified in the Letter of Credit Request as the Issuance Date for the requested Letter of Credit (or if any such Delayed Issuance Date is not a Business Day, then on the next succeeding Business Day) rather than on the Issuance Date requested in the Borrowing Request for the advance of such Loan or the Issuance Date requested in the Letter of Credit Request for the issuance of such Letter of Credit. On each Delayed Issuance Date, the Lender shall fund the Delayed Loan as specified in the related Borrowing Request or issue the Delayed Letter of Credit as specified in the Letter of Credit Request, as applicable, if on such date the conditions to the funding of such Loan or issuance of such Letter of Credit, as applicable, specified herein are satisfied.

**Section 2.04. Letters of Credit.**

(a) *General.* Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its PPA payment obligations, by delivering a Letter of Credit Request to the Lender at any time and from time to time during the Availability Period no less than five Business Days prior to the proposed Issuance Date for the requested Letter of Credit; *provided, however,* that prior to the issuance of the initial Letter of Credit hereunder, if requested by Lender, the Borrower and the Lender shall execute a Continuing Agreement for Standby Letters of Credit in the form provided by the Lender. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. 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 the Borrower to, or entered

into by the Borrower with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Person that is the subject of Sanctions, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement. A Letter of Credit shall not be issued unless, after giving effect to the issuance of proposed Letter of Credit, the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement as of the Issuance Date for the Letter of Credit will not exceed the Commitment. Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit that is in a form other than a standby letter of credit, except as may be agreed by the Lender.

(b) *Notice of Amendment, Renewal, Extension; Certain Conditions.* To request the amendment, renewal or extension of an outstanding Letter of Credit, the Borrower shall deliver written notice to the Lender (reasonably in advance of the requested date of amendment, renewal or extension, but in any event no less than five Business Days) a notice identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of 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 amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any such request with respect a Letter of Credit. A Letter of Credit shall be amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the sum of the principal amount of Loans outstanding plus the LC Exposure shall not exceed the Commitment.

(c) *Expiration Date.* Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the date that is five Business Days prior to the Maturity Date.

(d) *Reimbursement.* If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 1:00 p.m., New York City time, on the date on which the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, except as otherwise provided in Section 2.07(d). If the Lender is not reimbursed for the amount of any LC Disbursement on the date disbursed by the Lender, the amount of such LC Disbursement shall accrue interest at the Base Rate from date disbursed by the Lender until the date on which the repayment of the LC Disbursement is due pursuant to this Section 2.04(d) and shall thereafter accrue interest at the Default Rate except as otherwise provided in Section 2.07(d).

(e) *Obligations Absolute.* The 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 the 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, the Borrower's obligations hereunder. Neither the 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 or 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 or any consequence arising from causes beyond the control of the Lender; *provided* that the foregoing shall not be construed to excuse the Lender from liability to the 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 the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the 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 the Lender (as finally determined by a court of competent jurisdiction), the 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, the 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.* The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly notify the Borrower by telephone (confirmed by electronic communication) or electronic communication of such demand for payment and whether the 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 the Borrower of its obligation to reimburse the Lender with respect to any such LC Disbursement.

#### **Section 2.05. Interest Elections.**

(a) Each Loan initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term SOFR Loan, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Loan to a different Type or to continue such Loan and, in the case of a Term SOFR Loan, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Loan and the Loan comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by delivery of an Interest Election Request, executed by Authorized Representatives, by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election. Each such Interest Election Request shall be irrevocable.

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

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

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

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing, a Daily Simple SOFR Borrowing or a Term SOFR Borrowing; and

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

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

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Daily Simple SOFR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term SOFR Borrowing, (ii) unless repaid, each Daily Simple SOFR Borrowing shall be converted to a Base Rate Borrowing upon the occurrence of such Event Default and each Term SOFR Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto and (iii) all Loans shall bear interest at the Default Rate; *provided, however,* that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Lender if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.01(e) or Section 6.01(f).

#### **Section 2.06. Termination and Reduction of Commitment.**

(a) Unless previously terminated, the Commitment shall terminate on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, the 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 \$1,000,000 and (ii) the Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.08, the sum of the principal amount of Loans outstanding plus the LC Exposure would exceed the Commitment as so reduced or terminated.

(c) The Borrower shall notify the Lender of any election to terminate or reduce the Commitment under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitment shall be permanent.

#### **Section 2.07. Repayment of Loans; Evidence of Debt.**

(a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan on the Maturity Date except to the extent otherwise permitted by the terms of section 2.07(d).

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from each Loan made by the Lender, the Type of each Loan and the Interest Period, if any, applicable thereto and the amounts of principal and interest payable and paid to the 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 the Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.03) be represented by one or more promissory notes in such form.

(d) (i) In the event the Lender does not receive payment of the amount of Loans outstanding on the Maturity Date pursuant to Section 2.07(a) or the amount of any LC Disbursement on the date due pursuant to Section 2.04(d), and on such date no Default or Event of Default has occurred and is continuing and the representations and warranties of the Borrower set forth in this Agreement are true and correct in all material respects, assuming they are made on the Maturity Date or such due date pursuant to Section 2.04(d), as applicable, an amount equal to the principal amount of Loans outstanding or the LC Disbursement, as applicable, (the "*Amortization Amount*") shall be due and payable to the Lender in installments payable on each Amortization Principal Payment Date (each such payment, an "*Amortization Principal Payment*"), with the final installment in an amount equal to the remaining balance of the Amortization Amount on the

Amortization End Date (the period commencing on the Maturity Date or the date an LC Disbursement is due pursuant to Section 2.04(d), as applicable, and ending on the Amortization End Date and related to an Amortization Amount is herein referred to as the “*Amortization Period*” for such Amortization Amount). Each Amortization Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Principal Payments over the Amortization Period so the Amortization Amount is fully repaid by the end of the Amortization Period.

(ii) During the Amortization Period, interest on the Amortization Amount shall accrue at the Bank Rate and shall be payable in arrears on each Amortization Interest Payment Date.

(iii) Notwithstanding the first sentence of Section 2.08(b), the Amortization Amount may be prepaid at any time upon the Borrower providing one (1) Business Day’s prior written notice to the Lender, such prepayment to be accompanied by interest accrued thereon at the Bank Rate to the date of prepayment.

#### **Section 2.08. Prepayment of Loans.**

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section and payment of any amounts due and owing pursuant to Section 2.13 of this Agreement in connection with such prepayment.

(b) The Borrower shall notify the Lender by telephone (confirmed by electronic communication) of any prepayment hereunder (i) in the case of prepayment of a Daily Simple SOFR Borrowing or a Term SOFR Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitment as contemplated by Section 2.06, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10 and any amounts owing in connection therewith pursuant to Section 2.13.

**Section 2.09. Fees.** The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Commitment 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 2.10. Interest.**

(a) The Loans comprising each Base Rate Borrowing shall bear interest at the Base Rate.

(b) The Daily Simple SOFR Loans shall bear interest at an interest rate equal to Daily Simple SOFR plus the Applicable Margin.

(c) The Term SOFR Loans shall bear interest at an interest rate equal to Term SOFR plus the Applicable Margin.

(d) Upon the occurrence and continuance of an Event of Default hereunder, all Loans shall bear interest at the Default Rate. Interest accruing at the Default Rate shall be payable on demand of the Lender. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at the Default Rate. In addition, in the event that (i) the long-term rating assigned to System Debt by Fitch, Moody's or S&P (A) is withdrawn or suspended or (B) is reduced below BBB-, Baa3 or BBB-, respectively, or (ii) any event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect with respect to the Borrower's ability to receive Revenues or its ability to perform its obligations under the Agreement or the other Basic Documents, all Loans and other amounts owing to the Lender hereunder or under the Fee Agreement shall bear interest at the Default Rate. Notwithstanding clause (i) in the preceding sentence, any rating assigned by a Rating Agency to System Debt shall be disregarded for purposes of determining the interest rate borne by amounts owing hereunder and under the Fee Agreement until such time as the Borrower notifies the Lender that it has solicited such Rating Agency for such rating on System Debt and such Rating Agency assigns a participating rating to System Debt. For the avoidance of doubt the parties agree that, as of the Closing Date, the ratings assigned by Fitch and S&P to System Debt have been solicited by the Borrower and are participating ratings and shall not be disregarded. Further, the ratings assigned to System Debt by Fitch and S&P shall not be disregarded during the term of this Agreement without the prior written consent of the Lender, given or withheld in the sole discretion of the Lender.

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

(f) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed, except that interest computed by reference to the Base Rate or the Alternate Base Rate at times when the Base Rate or the Alternate Base Rate, as applicable, is based on the Prime Rate, Federal Funds Effective Rate or a fixed interest rate shall be computed on the basis of a year of 365 days and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, Alternate Base Rate,

Daily Simple SOFR and Term SOFR shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(g) If the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period, and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the “*Excess Interest*”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time the Borrower shall pay to the Lender, with respect to amounts then payable to the Lender that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Lender to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (x) the date of payment in full of all Obligations (other than Excess Interest which has not been recaptured) and this Agreement is no longer in effect, and (y) the date on which all deferred Excess Interest is fully paid to the Lender.

**Section 2.11. Benchmark Replacement Setting.** (a) If prior to the commencement of any Interest Period for a Term SOFR Borrowing or at any time for a Daily Simple SOFR Borrowing, the Lender determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for ascertaining Daily Simple SOFR or Term SOFR, as applicable, or (ii) Daily Simple SOFR or Term SOFR, as applicable, for such Interest Period (in the case of Term SOFR) will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loan included in such Borrowing for such Interest Period (in the case of Term SOFR); then the Lender shall give notice thereof to the Borrower by telephone or by electronic communication as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist or a Benchmark Replacement is established as provided below in this Section, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term SOFR Borrowing shall be ineffective and at the end of the current Interest Period such Borrowing shall automatically be converted to a Base Rate Borrowing, (B) each Daily Simple SOFR Borrowing shall be automatically converted to a Base Rate Borrowing and (C) if any Borrowing Request requests a Term SOFR Borrowing or Daily Simple SOFR Borrowing, such Borrowing shall be made as a Base Rate Borrowing.

(b) If at any time the Lender determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary, a Benchmark Replacement shall be established as provided below in this Section.

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

Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the date notice of such Benchmark Replacement is provided to the Borrower without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. No Swap Contract shall be deemed to be a “*Basic Document*” for purposes of this Section 2.11).

(d) In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the 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.

(e) The Lender will promptly notify the 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. The Lender will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.11(f) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.11, 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 2.11.

(f) 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 the 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, then the Lender may modify the definition of “*Interest Period*” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is no longer a non-representative tenor, then the Lender may modify the definition of “*Interest Period*” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Loan of, conversion to or continuation of SOFR 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 Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available

Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

**Section 2.12. 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, the Lender;

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

(iii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, 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 the Lender of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining the Commitment or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered. If the 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 the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loans made by the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(b) In the event that any Change in Law or compliance by the Lender and the office or branch where the Lender makes or maintains any SOFR Loans with any request or directive regarding capital or liquidity requirements (whether or not having the force of law) of any authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Lender's capital as a consequence of its obligations hereunder to a level below that which the Lender could have achieved but for such Change in Law (taking into consideration the Lender's policies with respect to capital adequacy), then, from time to time, the Borrower shall pay upon demand to the Lender such additional amount or amounts as will compensate the Lender for such reduction actually suffered. In determining such amount or amounts, the Lender may use any reasonable averaging or attribution methods.

(c) A certificate of the Lender setting forth a detailed accounting of the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as

specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender, as the case may be, the amount shown as due on any such certificate within 60 days after receipt thereof.

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

**Section 2.13. Break Funding Payments.** In the event of (a) the payment of any principal of any Term SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Term SOFR Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any Term SOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.08(b) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that the 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 the Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

**Section 2.14. Payments Free of Taxes.**

(a) Any and all payments by or on account of any obligation of the 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 the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the 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 the 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 2.14) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.14, the Borrower shall deliver to the 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 the Lender.

(d) The Borrower shall indemnify the Lender, within 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 the Lender or required to be withheld or deducted from a payment to the 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 certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(e) If the 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 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of the Lender, shall repay to the 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 the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the 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 the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(f) Each party's obligations under this Section 2.14 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

(g) For purposes of this Section 2.14, the term "*applicable law*" includes FATCA.

### **Section 2.15. Payments Generally.**

(a) The 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 costs and expenses, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 12:00 noon, 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 the 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 the Lender at its offices at 200 Vesey Street, New York, New York 10281 or pursuant to wire transfer instructions designated by the Lender by written notice to the Borrower, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.05 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 and under the Fee Agreement shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts then due hereunder, such funds shall be applied (i) first, towards payment of fees then due under the Fee Agreement, as set forth in the Fee Agreement, (ii) second, towards the payment of interest then due hereunder (iii) third towards payment of principal then due hereunder and (iv) fourth towards any other amounts owing hereunder.

**Section 2.16. Mitigation Obligation.** If the Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the 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 the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

**Section 2.17. 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 2.17. Upon receipt of written request of the Borrower to extend the Maturity Date, received no more than ninety (90) days and no less than sixty (60) days prior to the then current Maturity Date, the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); *provided, however*, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

**Section 2.18. Pledge; Security of Obligations.** The Net Revenues are hereby pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated, all Letters of Credit shall have expired or been terminated, in each case without any pending draw, and all Obligations shall have been paid in full. Notwithstanding any other provision of this Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues.

**Section 2.19. Illegality.** If the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to Daily Simple SOFR or Term SOFR, or to determine or charge interest rates based upon Daily Simple SOFR or Term SOFR, then, upon notice thereof by the Lender to the Borrower (such notice, an "*Illegality Notice*"), (a) any obligation of the Lender to make or continue SOFR Loans or to convert Base Rate Loans to SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of the Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate

on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Lender without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall prepay or, if applicable, convert all SOFR Loans to Base Rate Loans (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the lender without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such SOFR Loan to such day, or immediately, if the Lender may not lawfully continue to maintain such SOFR Loan, in each case, until it is no longer illegal for the Lender to determine or charge interest rates based upon SOFR. 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 2.13.

### ARTICLE III

#### CONDITIONS PRECEDENT

**Section 3.01. Conditions Precedent to Effectiveness.** The obligation of the 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.* The Lender has received an opinion of Chapman and Cutler LLP, special counsel to the Borrower, dated the Closing Date and addressed to the Lender in the form attached hereto as Exhibit A.

(b) *Documents.* (i) The Lender has received executed copies of the Basic Documents executed by the Borrower on or prior to the Closing Date certified by the Secretary of the Borrower, the Clerk of the Board or any Authorized Representative of the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date. (ii) The Lender has received a certified copy of the Joint Powers Agreement, including a FTB certificate or related state certification of the Borrower's status.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of the Borrower set forth in Article 4 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, the Fee Agreement, and the other Basic Documents, if any.

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

(e) *No Material Adverse Effect.* Since the date of the 2022 Audited Financial Statements, (i) no event or circumstance shall have occurred that has had a Material Adverse Effect 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 the Lender from fulfilling its obligations under this Agreement or any Letter of Credit.

(f) *Certificate.* The Lender has received (i) certified copies of all proceedings of the 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 3.01(c), (d), and (e) hereof and further certifying the name, incumbency and signature of each Authorized Representative authorized to sign this Agreement, the Fee Agreement, the other Basic Documents, if any, and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, on which certification the Lender may conclusively rely until a revised certificate is similarly delivered, and further certifying that the conditions precedent set forth in this Section 3.01 have been satisfied.

(g) *Financial Statements.* The Lender has received the 2022 Audited Financial Statements and internally prepared quarterly budget reports of the Borrower for the most recent fiscal quarter end, if not previously provided.

(h) *JPMorgan Agreement.* The Lender shall be provided evidence satisfactory to the Lender that all existing obligations owed by the Borrower to JPMorgan Chase Bank, National Association (“JPMorgan”) under the Revolving Credit Agreement dated as of November 29, 2019 between the Borrower and JPMorgan, as amended, have been paid in full, no letters of credit issued by JPMorgan under such Revolving Credit Agreement are outstanding and such Revolving Credit Agreement shall have terminated.

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

The execution and delivery of this Agreement by the Lender signifies its satisfaction with the conditions precedent set forth in this Section 3.01.

**Section 3.02. Conditions Precedent to Each Loan.** The obligation of the Lender to make a Loan and of the 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 the Borrower set forth in this Agreement shall be true and correct on and as of the date of such Borrowing or the Issuance Date.

(b) At the time of and immediately after giving effect to such Borrowing no Default or Event of Default shall have occurred and be continuing.

(c) At the time of such Borrowing the Net Revenues of the Borrower for the twelve month period preceding the date of such Borrowing are not less than Annual Debt Service payable in such twelve month period.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section 3.02.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

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

**Section 4.01. Organization, Powers, Etc.** The 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 would not have a Material Adverse Effect. The Borrower has (i) the power to (A) execute, deliver and perform its obligations under the Basic Documents and (B) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) complied with all Laws in all matters related to such actions of the Borrower as are contemplated by the Basic Documents.

**Section 4.02. Authorization, Absence of Conflicts, Etc.** The execution, delivery and performance by the Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of the 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 the 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 the Borrower is a party or by which the Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect.

**Section 4.03. Binding Obligations.** The Basic Documents are valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the 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 4.04. 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 the Borrower for execution, delivery and performance by the Borrower of the Basic Documents.

**Section 4.05. 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 Authority or other board, body or official pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by the Borrower of the Basic Documents or any proceeding taken or to be taken by the Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by the Borrower of the Basic Documents, or wherein an unfavorable decision,

ruling or finding could in any way have a Material Adverse Effect (any such action or proceeding being herein referred to as “*Material Litigation*”).

**Section 4.06. Financial Condition.** The most recent audited financial statements of the System delivered (or deemed delivered) to the 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 the Lender. The most recent unaudited financial statements of the System delivered (or deemed delivered) to the 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. Since the date of the most recent Audited Financial Statements delivered to the Lender, no event or circumstance has occurred that has had Material Adverse Effect.

**Section 4.07. Accuracy and Completeness of Information.** The Basic Documents and all certificates, financial statements, documents and other written information furnished to the Lender by or on behalf of the 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 the Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

**Section 4.08. No Default.**

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

(b) No “event of default” in respect of the Borrower 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 the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the System.

**Section 4.09. No Proposed Legal Changes.** There is no amendment or, to the knowledge of the 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 4.10. Compliance with Laws, Etc.** The Borrower is in compliance with the Investment Policy and all Laws applicable to the Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect. In addition, no benefit plan maintained by the Borrower for its employees is subject to the provisions of ERISA, and the Borrower is in compliance with all Laws in respect of each such benefit plan.

**Section 4.11. Environmental Matters.** In the ordinary course of its business, the Borrower conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but

not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Borrower does not believe that Environmental Laws are likely to have a Material Adverse Effect.

**Section 4.12. Regulation U.** The 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 4.13. Liens.** This Agreement creates a valid Lien on and pledge of the Net Revenues to secure the payment and performance of the Borrower's Obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement and Liens over Net Revenues securing Parity Debt and Subordinate Debt permitted by this Agreement, there is no pledge of or Lien on Net Revenues. All System Debt outstanding on the Closing Date is listed in Exhibit F hereto. There is no Senior Debt outstanding.

**Section 4.14. Sovereign Immunity.** The Borrower is not entitled to immunity from legal proceedings to enforce the Basic Documents (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Basic Documents.

**Section 4.15. Usury.** The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

**Section 4.16. Insurance.** As of the Closing Date, the Borrower maintains such insurance, including self-insurance, as is required by Section 5.01(j) hereof

**Section 4.17. ERISA.** The 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.

**Section 4.18. Sanctions Concerns and Anti-Corruption Laws.**

(a) Neither the Borrower, nor, to the knowledge of the Borrower, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Borrower and its officers and employees and to the knowledge of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar Anti-Corruption Laws in

other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**Section 4.19. System Debt.** The Borrower has not incurred or issued any System Debt other than the System Debt, if any, incurred or issued in accordance with Section 5.02(j).

## ARTICLE V

### COVENANTS

**Section 5.01. Affirmative Covenants.** Until the Commitment has expired or been terminated, all Letters of Credit shall have expired or been terminated, in each case, without any pending draw, and all Obligations payable hereunder shall have been paid in full and, the Borrower covenants and agrees with the Lender that:

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

(i) as soon as available, and in any event within sixty (60) days after the close of each fiscal quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the 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 annual accounting period of Borrower, a copy of the audited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period 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 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 constitutes Material Litigation or, if adversely determined, would result in the occurrence of a Default or Event of Default hereunder;

(v) as soon as available, the Borrower shall provide the Lender its annual budget; and

(vi) promptly after the request therefore, 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 5.01 shall be accompanied by a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative (x) 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 (y) stating the amount then on deposit in the Operating Reserve Fund and the Operating Reserve Account. In addition, the compliance certificate delivered in connection with the financial statements furnished to the Lender pursuant to subsection (a)(ii) above, shall include the Debt Service Coverage Ratio test required by Section 5.01(p).

(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, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the properties of the Borrower and the other assets of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request. For the avoidance of doubt, no such notice shall be required if an Event of Default has occurred and is continuing.

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

(i) The Borrower shall perform and comply with each covenant set forth in any agreement, instrument or document evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third party beneficiary of the covenants set forth in each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.01(c) with the same effect as if it were set forth herein in its entirety..

(ii) The Borrower covenants that it will maintain and preserve the System in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for municipal power systems of like size and character. The Borrower will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the System, so that at all times business carried on in connection with the System shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the System in an efficient and economical manner and shall not commit or allow any waste with respect to the System.

(d) *Defaults.* The Borrower shall notify the Lender of any Default or Event of Default of which the 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 the Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* The Borrower shall comply in all material respects with all Laws binding upon or applicable to the Borrower (including Environmental Laws and Sanctions) and material to the Basic Documents. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The 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) *Investment Policy and Guidelines.* The Borrower shall promptly notify the Lender in writing, not less than thirty (30) days after the Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase the types of investments permitted thereby as of the Closing Date.

(g) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or greater security, additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies (“*Improved Provisions,*” which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then the Borrower shall provide the Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Borrower shall promptly cooperate with the Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(h) *Further Assurances.* The 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 the Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(i) *Notices.* The Borrower shall promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement) or any document pursuant to which System Debt is incurred or payable, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other System Debt which are not restricted or prohibited from being shared with the Lender under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof, (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 the Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect.

(j) *Maintenance of Insurance.* The 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 the Borrower may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker's compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include 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 the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The 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.

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

(l) *Rates.* (i) To the fullest extent permitted by law, the Borrower will establish, fix and prescribe, prior to the commencement of each Fiscal Year, rates, fees and charges in the operation of all of its businesses, as long as any Obligations hereunder are outstanding and the Commitment has not been terminated, so as to yield Net Revenues at least sufficient, after making reasonable allowances for contingencies and error in the estimates to pay the following amounts:

(A) The interest on and principal of all Loans, LC Disbursements, Amortization Amounts and other Parity Debt as they become due and payable and past due amounts;

(B) All other amounts payable by the Borrower hereunder, under the Fee Agreement and under any Parity Debt; and

(C) All other amounts payable by the Borrower under the Basic Documents and the documents pursuant to which System Debt is incurred or payable which are secured by a Lien on or are payable from Net Revenues.

(ii) In addition to the requirements in Section 5.01(l)(i), to the fullest extent permitted by law, the Borrower shall establish, fix and prescribe, prior to the commencement of each Fiscal Year, rates, fees and charges in connection with the operation of all of its businesses, which are reasonably expected to be at least sufficient to yield during such Fiscal Year Net Revenues equal to 1.10 times Annual Debt Service payable in such Fiscal Year.

(iii) The Borrower may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce such rates, fees and charges below those then in effect unless the Net Revenues after

such reduction will at all times be sufficient to meet the requirements set forth in Section 5.1(l)(i) and (ii) above.

(iv) So long as the Borrower has complied with Section 5.01(l)(i) and Section 5.01(l)(ii) at the beginning of a Fiscal Year, neither the failure to yield the amount of Net Revenues as set forth in Section 5.01(l)(i) nor the failure of Net Revenues to equal 1.10 times Annual Debt Service as set forth in Section 5.01(l)(ii) at the end of such Fiscal Year shall constitute a Default or an Event of Default so long (A) Net Revenues for the Fiscal Year then ended is not less than Annual Debt Service payable in such Fiscal Year and (B) the Borrower complies with Section 5.01(l)(i) and Section 5.01(l)(ii) at the commencement of the succeeding Fiscal Year.

(m) *Budget.* The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all Obligations. If the amounts so budgeted are not adequate for the payment of the Obligations, the 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 the Lender during the course of the Fiscal Year to which such annual budget applies.

(n) *Payment of Taxes, Etc.* The 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 the 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 the Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(o) *Rating and Rating Change.* The Borrower shall maintain long-term ratings on System Debt from at least two of Fitch, Moody's and S&P which are not disregarded pursuant to the provisions of Section 2.10(d). The Borrower shall use its best efforts to notify the Lender as soon as practicable of any issuance, downgrade, suspension or withdrawal in rating of any System Debt.

(p) *Debt Service Coverage.* The Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.10 for each fiscal year of the Borrower, commencing with the fiscal year ended March 31, 2023. The Debt Service Coverage Ratio shall be tested on a rolling last twelve consecutive month basis and forward for the following twelve consecutive months as of the last day of each fiscal year commencing with the fiscal year ended March 31, 2023. The Borrower shall determine the Debt Service Coverage Ratio at each fiscal year and provide written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal year and in any event no later than the forty-five calendar days following the end of such fiscal year (each such notice, a "*Debt Service Coverage Ratio Notice*"). Notwithstanding the forgoing, so long as the Borrower has complied with the requirements set forth in Section 5.01(l)(i) and (ii) above, the failure of the Borrower to generate Net Revenues during a fiscal year of the Borrower in an amount at least sufficient to satisfy a Debt Service Coverage Ratio of 1.10 by the end of such fiscal year shall not, by itself, constitute a Default or an Event of Default.

(q) *Operating Reserve Account.* The Borrower shall maintain the Operating Reserve Account with unrestricted cash and investments at the Operating Reserve Account Requirement level at all times that amounts are due and owing to the Lender hereunder.

(r) *System.* The Borrower shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the Borrower to pay the fees, rates and charges applicable to the services and facilities furnished by the Borrower.

**Section 5.02. Negative Covenants.** Until the Commitment has expired or been terminated and the Obligations payable hereunder shall have been paid in full, the Borrower covenants and agrees with the Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Borrower to pay when due amounts owing to the Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues or the priority of payments from Net Revenues (other than Parity Debt or Subordinate Debt permitted by this Agreement); or (iii) the rights or remedies of the 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.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues other than the Liens created or permitted by this Agreement. No Lien on Revenues that is senior to the Lien on Revenues that secures the Obligations shall be permitted. No other Liens on Revenues shall be permitted except for Liens to secure indebtedness of the Borrower incurred in compliance with Section 5.02(j).

(f) *Sovereign Immunity.* Assert the defense of any future right of sovereign immunity in a legal proceeding to enforce or collect upon the obligations of the Borrower under any Basic Document or the transactions contemplated thereby.

(g) *System.* Construct, operate or maintain any system or utility competitive with the System. The Borrower shall not provide any service of the System free of charge to any Person, except (i) to the extent that any such free use is required by the terms of any existing contract or agreement and (ii) for incidental insignificant free use so long as such free use does not prevent the Borrower from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the System with any other entity or enterprise, unless and until the Borrower has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Net Revenues for the payment of the Obligations

and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Net Revenues set forth in this Agreement to be no longer valid. If the Borrower does effect such a merger, the Borrower shall provide written notice thereof to the Lender and shall deliver a copy of the aforementioned opinion to the Lender.

(i) *Use of Proceeds.* Use Letters of Credit for any purpose other than to secure the Borrower's obligations under PPAs. 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. The Borrower shall not use the proceeds for any Loan for any purposes other than general corporate purposes permitted by the Borrower's organizational documents and applicable law. For the avoidance of doubt, Loan proceeds may not be used for other long-term expenditures or for funding the Operating Reserve Account. The Borrower shall not use the proceeds of any Loan in violation of any Sanctions or Anti-Corruption Laws.

(j) *System Debt.*

(i) Issue, incur, assume or permit to exist any Senior Debt or any other Debt of the Borrower other than (A) Parity Debt described in clause (ii) below; and (B) Subordinate Debt described in clause (iii) below;

(ii) Issue, incur or assume to exist any Parity Debt except for: (A) the Obligations, and (B) Debt issued or incurred in compliance with the following conditions:

(A) no Default or Event of Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Parity Debt;

(B) such Parity Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement, the Ordinances or any other resolutions or ordinances adopted by the Borrower;

(C) the Operating Reserve Account is funded in an amount at least equal to the Operating Reserve Account Requirement immediately prior to the issuance or incurrence of such Parity Debt; and

(D) compliance by the Borrower with either (1) or (2) below:

(1) delivery of a written certificate of the Borrower: (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth Annual Debt Service for the preceding twelve month period (inclusive of any additional Parity Debt in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period

were at least equal to 1.25 times the Annual Debt Service for such period;  
or

(2) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth projected Net Revenues for the next succeeding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth projected Annual Debt Service (inclusive of any additional Parity Debt and in reasonable detail and with reasonable assumptions) for such succeeding twelve month period, and (iii) demonstrating that projected Net Revenues for the succeeding twelve month period are at least equal to 1.25 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the projected Net Revenues for the succeeding twelve month period as set forth in the foregoing clauses (i) and (iii), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or that are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional debt;

(iii) Issue, incur or assume to exist any Subordinate Debt except for Debt issued or incurred in compliance with the following conditions:

(A) no Default or Event of Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Subordinate Debt;

(B) such Subordinate Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement or any other resolutions or ordinances adopted by the Borrower;

(C) the Operating Reserve Account is funded in an amount at least equal to the Operating Reserve Account Requirement immediately prior to the issuance or incurrence of such Subordinate Debt or will be so funded after the issuance or incurrence of such Subordinate Debt and the application of the proceeds thereof; and

(D) compliance by the Borrower with either (1) or (2) below:

(1) delivery of a written certificate of the Borrower: (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth Annual Debt Service for the preceding twelve month period (inclusive of any additional Subordinate Debt in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period were at least equal to 1.10 times the Annual Debt Service for such period; or

(2) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth projected Net Revenues for the succeeding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth projected Annual Debt Service (inclusive of any additional Subordinate Debt and in reasonable detail and with reasonable assumptions) for the succeeding twelve month period, and (iii) demonstrating that projected Net Revenues for the succeeding twelve month period are at least equal to 1.10 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the Net Revenues for the projected twelve month period as set forth in the foregoing clause (i) and (iii), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or that are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional debt.

(k) *Excess Revenues*. Use excess revenues for any purpose other than: (i) payment of Operating and Maintenance Costs; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, other Parity Debt; (iv) funding and replenishment of the Operating Reserve Account; and (v) so long as no Event of Default has occurred and is continuing, (A) payment of interest on, and fees associated with, Subordinate Debt; (B) capital expenditures in connection with assets that will become part of the System; (C) rebates to System customers; and (D) any other lawful purpose that inures to the direct benefit of the System.

(l) *Master Trust Indenture*. The Borrower shall not enter into any trust agreement or indenture providing for the issuance of bonds, notes or other obligations constituting System Debt without first obtaining the written consent of the Lender, such consent not to be unreasonably withheld.

## ARTICLE VI

### DEFAULTS

**Section 6.01. Events of Default and Remedies.** If any of the following events occurs, each such event will be an “*Event of Default*”:

(a) the Borrower fails to pay, or cause to be paid, as and when due, (i) the principal of and interest on any Loan, the principal of or interest on any Amortization Amount or any LC Disbursement or (ii) any Obligation (other than as described in clause (i)) hereunder or under the Fee Agreement and, in such case, such failure continues for three (3) Business Days.

(b) any representation or warranty made by or on behalf of the 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) the Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.01(c), 5.01(d), 5.01(j), 5.01(k), 5.01(l) (provided, however at such time as no Loans, unreimbursed LC Disbursements or Letters of Credit are outstanding hereunder, the failure of the Borrower to satisfy the requirement set forth in clause (A) of Section 5.01(l)(iv) shall not constitute and Event of Default), 5.01(p), or 5.02 hereof;

(d) the 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) the 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 6.01(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.01(e)(v) is instituted against the 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 the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, any other Basic Document or the Joint Powers Agreement at any time for any reason ceases to be valid and binding on the 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 the Borrower, or the Borrower publicly contests the validity or enforceability of any obligation to pay System Debt, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, any other Basic Document or the Joint Powers Agreement or any operative document related to System Debt;

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

(j) the Borrower (i) defaults on the payment of the principal of or interest on any System Debt beyond the period of grace, if any, provided in the instrument or agreement under which such System Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any System Debt, including, without limitation, any Bank Agreement, 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 System Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such System Debt; and

(k) any final, nonappealable 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 \$10,000,000 are entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days.

**Section 6.02. Remedies.** Upon the occurrence of any Event of Default, and at any time thereafter during the continuance of such event, the Lender may by notice to the 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) declare that the Collateralization Date has occurred thereby requiring the delivery of cash collateral in the amount of the Collateralization Requirement pursuant to Section 6.03 (iii) to the extent permitted by the terms of the Letters of Credit, deliver written notice to the beneficiaries of the Letters of Credit that the Letters of Credit shall terminate on the 30<sup>th</sup> day following the date of delivery of such notice and on such 30<sup>th</sup> day the Letters of Credit with respect to which such notice is given will terminate and (iv) declare the Loans 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 the 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 the Borrower; and, in addition, in case of any Event of Default described in Section 6.01(e), 6.01(f) or 6.01(g), the Commitment shall automatically terminate, the Collateralization Date shall automatically occur and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the 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 the Borrower. In addition, upon the occurrence of an Event of Default the Lender may exercise, or cause to be exercised, any and all remedies as it may have under this Agreement or the Basic Documents and as otherwise available at law and at equity.

**Section 6.03. Remedies related to Letters of Credit.** (a) On the Collateralization Date the Borrower shall pay to the Lender in immediately available funds at the Lender's office designated in such demand, for deposit by the Lender in a special noninterest bearing cash collateral account (the "Cash Collateral Account") to be maintained at such office of the Lender as may be designated by the Lender, an amount equal to the Collateralization Requirement. The Cash Collateral Account shall be in the name of the Borrower (as a cash collateral account), but under the sole dominion and control of the Lender and subject to the terms of this Agreement.

(b) If at any time the Lender reasonably determines that any funds held in the Cash Collateral Account are subject to any right or claim of any Person other than the Lender or that the

total amount of such funds is less than the Collateralization Requirement, the Borrower will, forthwith upon demand by the Lender, pay to the Lender, as additional funds to be deposited and held in the Cash Collateral Account, an amount necessary to cause the balance then held in the Cash Collateral Account which the Lender determines to be free and clear of any such right and claim to equal the Collateralization Requirement.

(c) The Borrower hereby pledges, and grants to the Lender a security interest in, all funds held in the Cash Collateral Account from time to time and all proceeds thereof, as security for the payment of the Obligations.

(d) The Lender may, at any time or from time to time after funds are deposited in the Cash Collateral Account, apply funds then held in the Cash Collateral Account to the payment of the Obligations, in such order as the Lender may elect, as shall have become or shall become due and payable by the Borrower to the Lender under this Agreement.

(e) Neither the Borrower nor any Person claiming on behalf of or through the Borrower shall have any right to withdraw any of the funds held in the Cash Collateral Account, except as otherwise provided in Section 6.03(f) below and except that after the termination of all of the Commitment and the Letters of Credit, without a pending draw thereunder, in accordance with their terms and the payment of all Obligations, any funds remaining in the Cash Collateral Account shall be returned by the Lender to the Borrower or paid to whomever may be legally entitled thereto.

(f) So long as no Default has occurred and is continuing, the Lender will release to the Borrower or at its order at the written request of the Borrower, funds held in the Cash Collateral Account in an amount up to but not exceeding the excess, if any (immediately prior to the release of any such funds), of (x) the total amount of funds held in the Cash Collateral Account over (y) the Collateralization Requirement.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.01. Amendments, Waivers, Etc.** No amendment or waiver of any provision of this Agreement, or consent to any departure by the Borrower therefrom, will in any event be effective unless the same is in writing and signed by the Lender and an Authorized Representative of the Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

**Section 7.02. Notices.** All notices and other communications provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Borrower:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, California 94901

Attention: Vicken Kasarjian, Chief Operating Officer  
Telephone: (415) 464-6659  
Facsimile:  
Email:

with a copy to:

Chapman and Cutler LLP  
1270 Avenue of the Americas, 30th Floor  
New York, New York 10020  
Attention: Douglas A. Bird  
Telephone: (212) 655-2519  
Email:

(b) if to the Lender:

Royal Bank of Canada  
200 Vesey Street, 12<sup>th</sup> Floor  
New York, New York 10281  
Attention: Laurent Mastey  
Telephone: (212) 428-6534  
Facsimile: (212) 428-6201  
Email: laurent.mastey@rbccm.com

or, as to each Person named above, at such other address, including email address, or telephone or facsimile number as is designated by such Person in a written notice to the parties hereto. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Lender. The Lender or the Borrower agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Lender otherwise prescribes, (a) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor.

### **Section 7.03. 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 the Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of the Lender. The Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably), *provided* that the Lender shall be responsible for all costs solely relating to such transfer or assignment. For the avoidance of doubt, the Borrower's prior written consent shall not be required if an Event of Default has occurred and is continuing. This Agreement is made solely for the benefit of the Borrower and the 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, the Lender will be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of the Lender's rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of the Borrower. In the event of any such grant by the Lender of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower may continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The 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 the Lender; *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.01 hereof; and *provided, further*, that the Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Borrower would owe to the Lender but for such participation.

#### **Section 7.04. Liability of Lender; Indemnification.**

(a) To the extent permitted by the law of the State, the Borrower assumes all risk of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the proceeds thereunder; provided that this provision is not intended to and will not preclude the Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreement. Neither the 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 proceeds of any Loans or the transactions contemplated hereby and by the other Basic Documents or the acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the 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 the Lender against presentation of requests for LC Disbursements or Borrowing Requests which the 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 the Borrower is not required to indemnify the Lender for any claims, losses, liabilities, costs or

expenses to the extent, but only to the extent, caused by the gross negligence or willful misconduct of the Lender as determined by a court of competent jurisdiction in a final and non-appealable decision.

(b) To the extent permitted by the law of the State, the Borrower indemnifies and holds harmless the 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 the Lender may incur (or which may be claimed against the 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 the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender's willful misconduct or gross negligence as determined by a final and non-appealable order of a court of competent jurisdiction. The 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 the Borrower, any PPA Counterparty 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, the Borrower shall not assert, and waives, any claim against the 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 the Borrower under this Section 7.04 will survive the termination of this Agreement.

**Section 7.05. Expenses.** Upon receipt of a written invoice, the Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the 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 (*provided* that such expenses to be paid in connection with the preparation and execution and delivery will not exceed the amount specified in the Fee Agreement), (iii) the fees and disbursements of counsel to the Lender with respect to advising the 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 the Lender. In addition, and notwithstanding the foregoing, the 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 the Lender in enforcing any obligations or in collecting any payments due from the 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 the Borrower under this Section 7.05 will survive the termination of this Agreement.

**Section 7.06. No Waiver; Conflict.** Neither any failure nor any delay on the part of the 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 the Borrower and the Lender.

**Section 7.07. 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 7.01 hereof

**Section 7.08. Dealings.** The Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Borrower regardless of the capacity of the Lender hereunder.

**Section 7.09. 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.** This Agreement may be executed in two or more counterparts, each of which constitutes an original, but when taken together constitute but one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, emailed pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent.

**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 NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402); *PROVIDED*, THAT THE OBLIGATIONS OF THE BORROWER HEREUNDER (INCLUDING THE PLEDGE OF REVENUES) SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CHOICE OF LAW RULES.

(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) 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. Governmental Regulations.** The Borrower shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Borrower is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("*OFAC*"), the Department of the Treasury or included in any Executive Order that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (b) ensure that the proceeds of Loans or the LC Disbursements are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Borrower shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

**Section 7.15. USA PATRIOT Act.** The Lender notifies the 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 the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower agrees to provide such documentary and other evidence of the Borrower’s identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

**Section 7.16. Electronic Transmissions.** The Lender is authorized to accept and process any amendments, transfers, assignments of proceeds, LC Disbursements, consents, waivers and all documents relating to the Letters of Credit which are sent to Lender by electronic transmission, including SWIFT, electronic mail, telex, facsimile, courier, mail or other computer generated telecommunications and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission

**Section 7.17. Assignment to Federal Reserve Bank.** The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the Borrower to the Lender in accordance with the terms of this Agreement will satisfy the Borrower’s obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

**Section 7.18. Arm’s Length Transaction.** The transaction described in this Agreement is an arm’s length, commercial transaction between the Borrower and the Lender in which: (i) the Lender is acting solely as a principal (i.e., as a lender) and for its own interest; (ii) the Lender is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Lender has to the Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the other Basic Documents; and (v) the Lender is not recommending that the 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, the Borrower should discuss the information contained herein with the Borrower’s own legal, accounting, tax, financial and other advisors, as the Borrower deems appropriate.

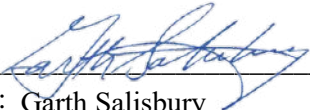
[Signature Pages Follow]

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

MARIN CLEAN ENERGY

By: *Vicken Kasarjian*  
Name: Vicken Kasarjian  
Title: COO

MARIN CLEAN ENERGY

By:   
Name: Garth Salisbury  
Title: Chief Financial Officer & Treasurer

ROYAL BANK OF CANADA

By: Laurent Mastey

Name: Laurent Mastey

Title: Authorized Signatory