

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 12

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To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager  
George Vaughn, Director of Finance & Internal Operations

Subject: Renewal of Revolving Line of Credit and Modification of Term Note

Date: September 10, 2020

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### RECOMMENDATION

Adopt a resolution approving an Amended and Restated Credit Agreement for \$7,000,000 (RLOC Agreement) and Modification of Valley Clean Energy's (VCE) Term Note from River City Bank (RCB).

### BACKGROUND AND ANALYSIS

At the December 14, 2017 Board meeting, the Board adopted a resolution to select RCB as the credit and banking services vendor for VCE and authorized the Interim General Manager to execute a letter of intent and enter into negotiations for final contracts with RCB for VCE credit facilities. On March 7, 2018, the Interim General Manager executed a term sheet for up to \$11,000,000 in total credit facilities for VCE with RCB.

At the May 10, 2018 Board meeting, the Board approved the Credit Agreement with RCB and authorized the Board Chair to approve and execute the Credit Agreement. The availability of the RLOC was set to expire 1 year from execution of agreement (May 15, 2019) with an option to extend the line for another 6 months for a total of 18 months.

At the April 11, 2019 Board meeting, the Board authorized VCE to extend the line for another 6 months, through November 15, 2019.

Since November, VCE has received a series of extensions to the RLOC from RCB. The current renewal is set to expire on August 31, 2020.

### RLOC Renewal

Since August 2018, VCE has not drawn on the RLOC and the outstanding balance of the line is currently \$0. VCE is in compliance with all its financial covenants stipulated in the Credit Agreement.

In discussions with RCB regarding the RLOC renewal, VCE staff and RCB concluded that the existing line (\$11M), significantly exceeded VCE's needs over the next year. Internal analysis and past use of the line indicated that a lower total amount would meet VCE's needs. Broadly,

these anticipated needs include possible letters of credit to secure future power purchase agreements (PPA's), as well as reserve funding in addition to VCE's \$14.4M cash reserves (July 31, 2020). Based on this analysis, VCE staff are recommending acceptance of an RLOC with a limit of \$5,000,000 available for cash advances and an additional \$2,000,000 available for Letters of Credit, for a total RLOC of \$7,000,000.

Staff believes that with the continued uncertainty of the PCIA fee, resource adequacy costs, and PG&E rates for 2020 and 2021, the renewal of the RLOC for another year provides additional financial flexibility for VCE.

To renew the RLOC Agreement, VCE will be required to pay fees of \$14,500 up-front. At the end of each year of the RLOC Agreement, VCE will be required to pay a Non-Utilization Fee equal to 0.10% of the average unused portion of the \$7,000,000 available credit. Thus, if VCE doesn't utilize the RLOC at all, the fee would be \$7,000 at the end of the term.

#### Conversion of RLOC Balance to Fixed Term Loan

At the October 10, 2019 Board meeting, the Board authorized VCE to convert the \$1,976,610 RLOC balance to an amortizing 5-Year Loan. VCE converted the RLOC to the loan and has paid it down to \$1,647,175 as of the date of this report.

As part of receiving the RLOC renewal described above, the Term Loan Note will be modified to mature on September 1, 2021 (Attachment 2 - Modification of Term Note). Though this is significantly earlier than the original 5-year term, the payment has been factored into cash forecasts for VCE. On September 1, 2021 a final payment of approximately \$1.28 million will be due to pay off the Term Loan. Note: RCB has communicated that there is a high probability the payment due date could be extended when the next RLOC renewal occurs in September 2021.

#### **CONCLUSION**

Staff recommends the Board adopt a resolution that approves the attached draft Amended and Restated Credit Agreement (RLOC Agreement) and attached draft Modification of Term Note from River City Bank (RCB), and authorizes the Interim General Manager to conduct any final negotiations and sign all necessary related documents on behalf of VCE.

#### Attachments

1. Amended and Restated Credit Agreement Draft Sep 2020
2. Modification to Term Note Draft Sep 2020
3. Resolution Extending Credit Agreement and Approving Modification to Term Note

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**AMENDED AND RESTATED**

**CREDIT AGREEMENT**

**Dated as of September \_\_, 2020**

**by and between**

**VALLEY CLEAN ENERGY ALLIANCE,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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## AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (this “*Agreement*”) is entered into as of September \_\_, 2020, by and between **VALLEY CLEAN ENERGY ALLIANCE**, 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. (“*Borrower*”), and **RIVER CITY BANK**, a California corporation (“*Lender*”).

### W I T N E S S E T H:

WHEREAS, Borrower and Lender have entered into that certain Credit Agreement (the “*Original Credit Agreement*”) dated as of May 16, 2018, pursuant to which Lender agreed to make available to Borrower a revolving credit facility;

WHEREAS, Borrower and Lender desire to amend, restate and replace the Original Credit Agreement, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

#### SECTION 1. DEFINITIONS AND INTERPRETATION.

*Section 1.1. Definitions.* All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them in **Exhibit A**.

#### *Section 1.2. Other Interpretive Provisions.*

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and

including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and \$. All references to “dollars” or “\$” refer to United States dollars.

### *Section 1.3. Accounting Principles.*

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower’s financial condition will be the same after such change in GAAP as if such change had not been made.

## SECTION 2. THE REVOLVING LINE OF CREDIT.

*Section 2.1. Revolving Credit.* Subject to the terms and conditions of this Agreement, Lender agrees to make a revolving credit facility (the “*Revolving Credit*”) available to Borrower for the sole purpose of (a) providing working capital (each a “*Cash Advance*”) in an aggregate principal amount not to exceed, at any one time, \$5,000,000.00 (the “*Cash Advance Sublimit*”) and (b) supporting the issuance of Letters of Credit (each a “*Letter of Credit Advance*”) in accordance with Section 4. The Revolving Credit will be disbursed in one or more advances (each, an “*Advance*”), provided that all outstanding Advances shall not exceed in the aggregate, at any one time, the Revolving Credit Commitment, and provided further that the conditions precedent to Advances specified in Section 9 are satisfied. Subject to the Cash Advance Sublimit, the Revolving Credit Commitment and the other terms and conditions of this

Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

*Section 2.2. Advances.* Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

*Section 2.3. Revolving Note.* The Revolving Credit is evidenced by a Revolving Credit Promissory Note (the "*Revolving Note*") made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B**. For each Letter of Credit requested by Borrower and issued in accordance with Section 4, Borrower will execute and deliver to Lender a promissory note in the form (with appropriate insertions) attached hereto as **Exhibit C** (a "*Letter of Credit Note*") in the stated principal amount equal to the face amount of such Letter of Credit. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining Availability and the non-utilization fee described in Section 5.1(c). However, each Letter of Credit Note will evidence Borrower's obligation to repay the lesser of the stated principal amount thereof or the unreimbursed amount (the "*Unreimbursed Amount*") of any drawing actually paid by Lender under a Letter of Credit, in accordance with Section 4.3. All references to "Advances" in Sections 2.4, 3.1 and 3.2 shall, with respect to a Letter of Credit Advance, refer solely to the outstanding Unreimbursed Amount(s) evidenced by the corresponding Letter of Credit Note.

*Section 2.4. Repayment.*

(a) *Revolving Credit Termination Date.* All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the Notes. Except for the Term Loan, any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date.

### SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

*Section 3.1. Interest Payments.*

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full, as provided herein and in the Revolving Note. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date. Interest on Advances will

be payable monthly in arrears on each Payment Date. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under the Notes or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

*Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates.* All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

*Section 3.3. Prepayments.*

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Note, in whole or in part, together with interest accrued on the principal amount prepaid, at its option and without premium, prior to the applicable Maturity Date or the Termination Date, as the case may be.

(b) Mandatory Prepayment. If for any reason at any time the aggregate total outstanding amount of Advances exceeds the Revolving Credit Commitment, then Borrower shall, without notice, prepay Advances (together with all accrued but unpaid interest thereon) in an amount equal to such excess.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

*Section 3.4. Place and Application of Payments and Collections.* All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank  
Loan Center  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

*Section 3.5. Notations.* All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of any Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

#### SECTION 4. LETTERS OF CREDIT.

##### *Section 4.1. Letter of Credit Commitment.*

(a) Subject to the terms and conditions of this Agreement, Lender agrees (1) to issue Letters of Credit in Dollars for the account of Borrower, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any Letter of Credit Advance, the aggregate principal amount of all Advances shall not exceed the Revolving Credit Commitment. Each request by Borrower for the issuance of a Letter of Credit shall be deemed to be a representation by Borrower that the Letter of Credit Advance so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

(b) Lender shall have no obligation to issue any Letter of Credit if:

(i) The initial expiry date of the requested Letter of Credit is more than twelve (12) months after the date of issuance;

(ii) The initial expiry date of the requested Letter of Credit is more than twelve (12) months after the Revolving Credit Termination Date;

(iii) The expiry date of the requested Letter of Credit, after giving effect to any auto-renewal feature, would occur more than seven (7) years after the date of issuance; provided, however, that this condition shall not apply (1) if the Letter of Credit is secured by cash collateral, or (2) Lender's Chief Executive Officer or Chief Credit Officer approves a waiver of this condition in writing;

(iv) The requested Letter of Credit does not provide Lender with the opportunity to decline to renew the Letter of Credit at least annually, or requires Lender to provide a notice of non-renewal, if any, earlier than sixty (60) days before the expiration of the Letter of Credit;

(v) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to Lender;



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

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

(viii) The Letter of Credit is to be denominated in a currency other than Dollars;

(ix) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or

(x) The issuance of the Letter of Credit would cause the aggregate outstanding amount of all Advances to exceed the Revolving Credit Commitment at the time of issuance.

#### *Section 4.2. Issuance of Letters of Credit.*

(a) Each Letter of Credit shall be issued upon the request of Borrower delivered to Lender in the form of Lender's standard Letter of Credit Application completed to the satisfaction of Lender and signed by an Authorized Representative of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and must be received by Lender not later than ten (10) Business Days (or such later date as Lender may agree in its sole discretion) before the proposed issuance date. Such Letter of Credit Application shall specify in form and detail satisfactory to Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit, which shall be to pay for power purchases or to provide collateral security for power purchases; and (viii) such other matters as Lender may require. Additionally, Borrower will furnish to Lender such other documents and information pertaining to such requested Letter of Credit issuance as Lender may request.

(b) Subject to the terms and conditions hereof, Lender shall, on the requested date, issue a Letter of Credit for the account of Borrower in such form as may be approved from time to time by Lender and in accordance with Lender's usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit to the beneficiary thereof, Lender will also deliver to Borrower a true and complete copy of such Letter of Credit.

*Section 4.3. Drawings and Reimbursements of Letters of Credit.* Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which Lender determines to be in compliance with the conditions for payment thereunder, Lender will notify Borrower of the intended date of honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the "*Reimbursement Date*") that is three (3) Business Days after any payment by Lender under a Letter of Credit (each such date, an "*Honor Date*"), Borrower shall reimburse Lender by making payment to Lender in an amount equal to the amount of such payment. Borrower's failure to so reimburse Lender on or before the Reimbursement Date shall constitute an Event of Default under this Agreement.

*Section 4.4. Unexpired Letters of Credit.* Borrower agrees that, if any Letter of Credit has been issued by Lender or its correspondent and remains unexpired on the Revolving Credit Termination Date, then Borrower shall immediately provide Cash Collateral to Lender with a value of not less than 110% of the aggregate principal amount of all Letter of Credit Advances with respect to unexpired Letters of Credit.

*Section 4.5. Obligations Absolute.*

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

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

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

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

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

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

(vi) any payment made by Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must

be received under such Letter of Credit if presentation after such date is authorized by the UCC, the International Standby Practices (“ISP”) or the Uniform Customs and Practice for Documentary Credits (“UCP”), as applicable;

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

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

(b) Borrower shall promptly examine a copy of each Letter of Credit that is delivered to it, and, in the event of any claim of noncompliance with Borrower’s instructions or other irregularity, Borrower will immediately notify Lender of such claim in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender and its correspondents unless such notice is given.

*Section 4.6. Role of Lender as L/C Issuer.* Borrower agrees that, in paying any drawing under a Letter of Credit, Lender or its correspondent shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of Lender, any of its Related Parties nor any correspondent, participant or assignee of Lender shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither Lender, nor any correspondent, participant or assignee of Lender shall be liable or responsible for any of the matters described in Section 4.2; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the Lender to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by Lender’s willful misconduct or gross negligence or Lender’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial

Telecommunications (“SWIFT”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

*Section 4.7. Applicability of ISP, Limitation of Liability.* Unless otherwise expressly agreed by Lender and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrower for, and Lender’s rights and remedies against Borrower shall not be impaired by, any action or inaction of Lender required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

*Section 4.8. Letter of Credit Fees.* Borrower shall pay to Lender (i) fees upon the issuance of each Letter of Credit in an amount equal to the greater of two percent (2.00%) per annum of the face amount thereof over the anticipated expiration period the (“*Issuance Fee*”) or Four Hundred and 00/100 Dollars (\$400.00) (the “*Flat Fee*”), (ii) a documentation fee in connection with the issuance or amendment of any Letter of Credit in an amount equal to Two Hundred Fifty and 00/100 Dollars (\$250.00), and (iii) reasonable and customary fees upon the occurrence of any other activity with respect to any Letter of Credit (including without limitation, the transfer or cancellation of any Letter of Credit). The fee for any increase to a Letter of Credit shall be an amount equal to the greater of the Issuance Fee (based on the amount of the increase and remaining period) or the Flat Fee. Borrower shall pay to Lender market prices as reasonably determined by Lender for Letters of Credit issued by Lender’s correspondent banks. All Letter of Credit Fees will be due and payable in full upon request by Lender. Borrower acknowledges and agrees that (i) the fees listed above are Lender’s current fees, (ii) Lender may change such fees from time to time upon notice to Borrower, and (iii) Borrower will pay such fees as changed by Lender from time to time

*Section 4.9. Billing and Payment of the Issuance Fee.* The Issuance Fee will be calculated by Lender and due and payable upon issuance of each Letter of Credit. Lender will calculate the Issuance Fee as 2.00% of the face amount of the Letter of Credit, divided by 360 to arrive at a daily per diem. The daily per diem will be multiplied by the number of days in the anticipated expiration period to arrive at the Issuance Fee.

## SECTION 5. FEES.

*Section 5.1.* Borrower shall pay to Lender fees in connection with the Revolving Credit as follows:

(a) Loan Fee. A Loan Fee in an amount equal to 0.20% of the Revolving Credit Commitment (\$14,000.00).

(b) Documentation Fee. A Documentation Fee in the amount of \$500.00.

(c) Non-Utilization Fee. Borrower agrees to pay to Lender an annual non-utilization fee in an amount equal to 0.10% of the Average Daily Unused Amount of the Revolving Credit Commitment. “*Average Daily Unused Amount*” means the sum of each calendar day’s Availability during the applicable period, divided by the number of calendar days within the period. “*Availability*” means the difference between \$7,000,000.00 and the sum of all outstanding Advances at the close of business each day. The non-utilization fee for the period from the date of this Agreement to the Revolving Credit Termination Date shall be due and payable by no later than thirty (30) days after the Revolving Credit Termination Date. Notwithstanding the foregoing, upon the termination of the Revolving Credit Commitment (a) at the request of Borrower or (b) following the occurrence of any Event of Default, the non-utilization fee for the period from the date of this Agreement to the date of termination shall be due and payable immediately.

(d) Other Costs and Fees. Borrower shall be subject to and agrees to pay any and all other costs and expenses incurred by Lender associated with the underwriting, documentation and administration of this Agreement, including any reasonable fees and expenses of legal counsel retained by Lender.

SECTION 6. [Intentionally omitted.]

SECTION 7. COLLATERAL.

*Section 7.1. Debt Service Reserve Account.* As a condition to Lender’s obligation to make any Advances under the Revolving Credit, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the “*Debt Service Reserve Account*”), with a balance of not less than \$1,100,000.00 at all times. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

*Section 7.2. Pledge and Security.* As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in all Accounts, Revenues, Resource Adequacy Contracts, and the Debt Service Reserve Account, and (i) all replacements, substitutions or proceeds of the foregoing, (ii) all instruments and documents now or hereafter evidencing the of the foregoing, (iii) all powers, options, rights, privileges and immunities relating to the foregoing, and (iv) all interest, income, profits and proceeds of the foregoing. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds then remaining in the Debt Service Reserve Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys’ fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Note or any other Obligations in such manner and order as Lender shall deem appropriate in

its sole discretion, (B) exercise any and all rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under the Assignment of Deposit Account shall be cumulative.

*Section 7.3. Restrictions on Debt Service Reserve Account.* Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than \$1,100,000.00 after giving effect to such withdrawal, (2) no Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal.

*Section 7.4. General Obligation.* Notwithstanding any other provision of this Agreement or any other Loan Document to the contrary, Borrower hereby acknowledges and agrees that payment of all Obligations (including, without limiting the foregoing, payments of principal of and interest on each Advance) is a general obligation of Borrower secured by a first priority lien on the collateral described in this Agreement. Lender acknowledges that the Obligations of Borrower hereunder are solely obligations of Borrower and are not debts, liabilities or obligations of any of the JPA Members and no taxing power of any of the foregoing is pledged therefore. Borrower has no taxing powers.

*Section 7.5. Lockbox Accounts.* Notwithstanding anything to the contrary in this Section 7 or elsewhere in this Agreement, Lender acknowledges that Borrower has established a lockbox “revenue” account and lockbox “reserve” account with Lender (collectively, the “*Lockbox Accounts*”) into which Revenues collected by Sacramento Municipal Utility District (“*SMUD*”) on behalf of Borrower will be deposited and from which excess Revenues after payment of amounts due to SMUD will be transferred to Borrower’s operating account. The amounts on deposit in the Lockbox Accounts, to the extent of SMUD’s interest therein, will not be subject to setoff or other exercise of Lender’s rights and remedies.

## SECTION 8. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender that, as of the date of this Agreement, as of the date of each Advance, and at all times any Obligations remain outstanding to Lender:

*Section 8.1. Organization and Qualification; Authority; Consents.* Borrower (a) is 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.) 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 on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other

Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute the Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Amended Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any power purchase agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

*Section 8.2. Legal Effect.* This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

*Section 8.3. Subsidiaries.* Borrower has no Subsidiaries.

*Section 8.4. Use of Proceeds.* Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Amended Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

*Section 8.5. Financial Reports.* Effective with the delivery to Lender of the financial statements required by Section 10.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

*Section 8.6. Full Disclosure.* The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

*Section 8.7. Litigation.* There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

*Section 8.8. Good Title.* Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

*Section 8.9. Members.* Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

*Section 8.10. Compliance with Laws.* Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 8.11. Other Agreements.* Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 8.12. No Default.* No Default or Event of Default has occurred or is continuing.

*Section 8.13. Sovereign Immunity.* Borrower is not entitled to immunity from legal proceedings to enforce this Agreement or any other Loan Document to which Borrower is a party (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 this Agreement or any other Loan Document to which Borrower is a party.

*Section 8.14. Anti-Terrorism Laws.* Borrower is not in violation of any law relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the Patriot Act.



SECTION 9. CONDITIONS PRECEDENT.

*Section 9.1. All Advances.* The obligation of Lender to make any Advance is subject to the following conditions precedent:

(a) Each of the representations and warranties set forth in Section 8 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 8.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 10.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Notes, the Assignment of Deposit Account and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

(c) Lender shall have received properly completed and executed originals of the following in form and substance satisfactory to Lender:

- (i) this Agreement, the Revolving Note, the Assignment of Deposit Account and Document Summary;
- (ii) the First Modification of Term Note in the form provided herewith, advancing the Maturity Date of the Term Loan from November 1, 2024 to the Revolving Credit Termination Date;
- (iii) the Amended Joint Powers Agreement;
- (iv) a favorable written legal opinion from Borrower's counsel as to the formation, existence and good standing of Borrower; the power and authority of Borrower to enter into this Agreement and perform its Obligations hereunder; and the due execution, validity and enforceability of this Agreement and the other Loan Documents;
- (v) in the case of a Cash Advance, a Request for Advance in the form of **Exhibit D** with supporting documentation;
- (vi) the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
- (vii) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;
- (viii) evidence of Borrower's good standing in the state of California;
- (ix) payment by Borrower of all fees and other amounts required to be paid pursuant to Sections 5.1 and 12.4(a) of this Agreement;

- (x) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;
  - (xi) customer verification information for officers of Borrower and signers of the Loan Documents as Lender may require; and
  - (xii) evidence of Liability Insurance in form and substance satisfactory to Lender.
- (d) In the case of a Letter of Credit Advance, the request is made in accordance with Section 4;
- (e) The Debt Service Reserve Account shall be funded with a balance of not less than \$1,100,000.00; and
- (f) Any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

#### SECTION 10. COVENANTS.

Borrower covenants and agrees as follows:

*Section 10.1. Maintenance of Business.* Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

*Section 10.2. Financial Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, Borrower shall furnish to Lender:

- (a) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an unaudited balance sheet of Borrower as of the last day of the month then ended and 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;
- (b) as soon as available, and in any event no later than one hundred eighty (180) days after each Fiscal Year End, a CPA-audited balance sheet of Borrower as of the last day of the Fiscal Year End and CPA-audited 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 review procedures as were considered necessary in the circumstances;

(c) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an aged list of accounts receivable and accounts payable;

(d) 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;

(e) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(f) promptly upon request, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to this Section 10.2 shall be accompanied by a written certificate signed by the Director of Finance of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

*Section 10.3. Maintenance of Debt Service Reserve Account.* Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 7.

*Section 10.4. Exclusive Deposit Relationship.* Borrower shall maintain all of Borrower's deposit accounts exclusively with Lender. If this covenant is not satisfied, as determined by Lender, it will not constitute an Event of Default, but the Applicable Rate on all outstanding Notes will immediately increase by an additional **2.00** percentage point margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

*Section 10.6. Adjusted Tangible Unrestricted Net Position.* Borrower shall maintain a minimum Adjusted Tangible Unrestricted Net Position not at any time less than Eight Million and

00/100 Dollars (\$8,000,000.00), measured annually as of Fiscal Year End commencing with the fiscal year ending June 30, 2020.

“*Adjusted Tangible Unrestricted Net Position*” means total Adjusted Unrestricted Net Position less any intangible assets.

“*Adjusted Unrestricted Net Position*” means Net Position, less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, plus the balance of deposits in the Debt Service Reserve Account.

“*Net Position*” means total assets less total liabilities.

*Section 10.7. Change in Net Position.* Borrower must achieve a cumulative (year-to-date) change in Net Position, measured as of the end of each fiscal quarter, equal to or better than:

<b>Period</b>	<b>Maximum Loss</b>
6/30/2020 – 9/30/2020	(\$50,000.00)
6/30/2020 – 12/31/2020	(\$340,000.00)
6/30/2020 – 3/31/2021	(\$3,300,000.00)
6/30/2020 – 6/30/2021	(\$3,400,000.00)

*Section 10.8. Total Liabilities to Tangible Unrestricted Net Position.* Borrower shall maintain a maximum Total Liabilities to Tangible Unrestricted Net Position not at any time greater than **1.50:1.00**, measured quarterly as of the end of each calendar quarter.

“*Total Liabilities to Tangible Unrestricted Net Position*” means the sum of all current liabilities, non-current liabilities and Contingent Liabilities, divided by Tangible Unrestricted Net Position.

“*Tangible Unrestricted Net Position*” means Net Position, less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, less intangible assets.

“*Contingent Liabilities*” means any present obligation that arises from past events, but is not recognized because (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or (ii) the amount of the obligation cannot be measured with sufficient reliability. Contingent Liabilities include all outstanding Letter of Credit Advances, and exclude power purchase contingencies and amounts available for Advances under the Revolving Credit Commitment.

*Section 10.9. Inspection.* Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event no more than six (6) times during any twelve (12) month period if no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be

advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

*Section 10.10. Liens.* Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$200,000 at any one time outstanding;

(d) Liens created pursuant to an approved power purchase agreement; and

(e) Liens arising under the Loan Documents or otherwise in favor of Lender.

The Liens described in clauses (a) through (e) of this Section 10.10 are collectively referred to in this Agreement as the "*Permitted Liens*."

*Section 10.11. Investments, Acquisitions, Loans, Advances and Guaranties.* Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports

an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

*Section 10.12. Compliance with Laws.* Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

*Section 10.13. Contracts With Members.* Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

*Section 10.14. Notices of Claims and Litigation.* Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower's financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

*Section 10.15. Other Agreements.* Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

*Section 10.16. Performance.* Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

*Section 10.17. Compliance Certificates.* Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

*Section 10.18. Fiscal Year.* Borrower shall not change its fiscal year without the prior written consent of Lender.

*Section 10.19. Indebtedness for Borrowed Money.* As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money. Without Lender's prior written consent, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money in excess of Five Hundred Thousand Dollars (\$500,000.00) in the aggregate; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

*Section 10.20. Resource Adequacy.* As soon as available, Borrower will deliver to Lender all material information with respect to any Resource Adequacy Contract entered into by Borrower from and after the date of this Agreement, and will promptly execute and deliver to Lender such documents, instruments, assignments, consents and agreements as Lender may reasonably request for the purpose of creating, perfecting, maintaining and enforcing Lender's security interest therein.

#### SECTION 11. EVENTS OF DEFAULT AND REMEDIES.

*Section 11.1. Events of Default.* Any one or more of the following will constitute an "Event of Default" hereunder:

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under the Notes, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or

(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars (\$1,000,000) is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Revolving Credit or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower's operations or financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired, or a new law or regulation is passed (or an existing law or regulation is changed) which has a material adverse effect on Borrower; or

(g) a JPA Member fails to continue to be a member of Borrower; or

(h) Borrower (i) takes any steps to effect a Winding-Up, or (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due;

(i) any custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, whether by court order, by operation of law or otherwise, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due; or

(j) Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any other Loan Document or in any other agreement between Lender and Borrower, which failure is capable of being cured, if such failure is not cured within thirty (30) days after written notice thereof from Lender; provided however, that if any such failure cannot reasonably be cured within such 30-day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender's initial default notice as long as Borrower diligently and continuously proceeds to cure such failure. Borrower agrees to reimburse Lender for all reasonable costs and expenses (including legal fees) incurred by Lender as a result of any failure described in this paragraph until cured.

*Section 11.2. Non-Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in clauses (a) through (g) or (j) of Section 11.1, Lender or any permitted holder of the Notes may, by notice to Borrower, take any of the following actions:

(a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;

(b) declare all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

*Section 11.3. Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in Section 11.1(h)-(i), all Advances and all indebtedness under any Note then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).



SECTION 12. MISCELLANEOUS.

*Section 12.1. Holidays.* If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

*Section 12.2. No Waiver, Cumulative Remedies.* No delay or failure on the part of Lender or on the part of the holder of any Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 12, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

*Section 12.3. Amendments, Etc.* No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

*Section 12.4. Costs and Expenses.*

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 5.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

*Section 12.5. Indemnity.* Whether or not the transactions contemplated hereby shall be consummated, Borrower shall, to the extent permitted by law, indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an “*Indemnified Person*”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys’ costs and expert witnesses’ fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the “*Indemnified Liabilities*”); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower’s obligation and duty hereunder to indemnify and hold harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.

The obligations of Borrower in this Section 12.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person’s sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 12.5 shall be paid within thirty (30) days after demand.

*Section 12.6. Right of Set Off.* To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower’s accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

*Section 12.7. Survival of Representations.* All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this

Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

*Section 12.8. Notices.* Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier, email or telecopy) and will be given to the relevant party at its address, email address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device (including electronic mail) capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Valley Clean Energy Alliance  
604 2nd Street  
Davis, CA 95616  
Attention: Mitch Sears, Interim General Manager

To Lender at:

River City Bank  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833  
Telephone: (916) 567-2700  
Fax: (916) 567-2780  
Attention: R.J. Wood, Loan Center

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy or email is transmitted to the telecopier number or email address specified in this Section and a confirmation of such telecopy or email has been received by the sender, (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 12.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

*Section 12.9. Headings.* Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

*Section 12.10. Severability of Provisions.* 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.

*Section 12.11. Counterparts.* This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

*Section 12.12. Assignments, Binding Nature, Governing Law, Etc.* This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

*Section 12.13. Submission to Jurisdiction; Waiver of Jury Trial.* Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

*Section 12.14. Time is of the Essence.* Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

*Section 12.15. Consent to Loan Participation.* Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit or the Term Loan to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit and the Term Loan such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Notes and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further

waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Notes. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

*Section 12.16. No Recourse Against Constituent Members of Borrower.* Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Amended Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

*Section 12.17. Restated Credit Agreement.* This Agreement amends, restates and replaces in its entirety that certain Credit Agreement between Borrower and Lender dated May 16, 2018, as previously amended from time to time.

*[Signatures appear on following page.]*

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth.

Executed and delivered in Sacramento, California, as of the first date written above.

VALLEY CLEAN ENERGY ALLIANCE

By: \_\_\_\_\_

Name: Mitch Sears

Its: Interim General Manager

RIVER CITY BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT A

### Definitions

“*Accounts*” means all rights to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a secondary obligation incurred or to be incurred, or (iv) for energy provided or to be provided.

“*Adjusted Tangible Unrestricted Net Position*” is defined in Section 10.6.

“*Adjusted Unrestricted Net Position*” is defined in Section 10.6.

“*Advance*” is defined in Section 2.1.

“*Agreement*” means this Amended and Restated Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

“*Amended Joint Powers Agreement*” means the amended Joint Powers Agreement of Borrower effective as of \_\_\_\_\_.

“*Applicable Rate*” means, for the Revolving Credit, a variable rate of interest equal to the One-Month UST plus 2.00% per annum, subject to a floor of 2.00% per annum. The Applicable Rate is subject to increase as provided in Section 10.4.

“*Assignment of Deposit Account*” means the Assignment of Deposit Account dated as of the date of this Agreement, executed by Borrower with respect to the Debt Service Reserve Account.

“*Authorized Representative*” means those persons shown on the list of officers provided by Borrower pursuant to Section 9.1(c)(v), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

“*Availability*” is defined in Section 5.1(c).

“*Average Daily Unused Amount*” is defined in Section 5.1(c).

“*Borrower*” is defined in the introductory paragraph.

“*Business Day*” means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

“*CAL ISO*” means California Independent System Operator.

“*Capital Lease*” means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligation*” means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

“*Cash Advance*” is defined in Section 2.1.

“*Cash Advance Sublimit*” is defined in Section 2.1.

“*Cash Collateralize*” means, to pledge and deposit with or deliver to Lender, as collateral for the Obligations, in each case, in Dollars and in such amount as Lender may reasonably require, and pursuant to documentation in form and substance reasonably satisfactory to Lender. “*Cash Collateral*” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“*Contingent Liabilities*” is defined in Section 10.8.

“*CPUC*” means the California Public Utilities Commission.

“*Debt Service Reserve Account*” is defined in Section 7.1.

“*Debtor Relief Laws*” means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“*Default Rate*” means the Applicable Rate plus five percent (5.0%).

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

“*Event of Default*” is defined in Section 11.1.

“*Fiscal Year End*” means June 30.

“*Flat Fee*” is defined in Section 4.8.

“*GAAP*” means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity



exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

*“Honor Date”* is defined in Section 4.3.

*“Indebtedness for Borrowed Money”* means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

*“Indemnified Liabilities”* is defined in Section 12.5.

*“Indemnified Person”* is defined in Section 12.5.

*“Initial Rate Set Date”* means September 1, 2020.

*“ISP”* is defined in Section 4.5.

*“Issuance Fee”* is defined in Section 4.8.

*“JPA Members”* means the City of Woodland, the City of Davis, the City of Winters and the County of Yolo.

*“Lender”* is defined in the introductory paragraph.

*“Letter of Credit Advance”* is defined in Section 2.1.

*“Letter of Credit Note”* is defined in Section 2.3.

*“Lien”* means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

*“Loan Documents”* means this Agreement, the Notes, the Assignment of Deposit Account, and all other documents, certificates, instruments and agreements executed by Borrower in connection with the Revolving Credit.

*“Lockbox Accounts”* is defined in Section 7.5.

*“Maintenance and Operation 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 a 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. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

*"Maturity Date"* means, for any Note, the date so specified in such Note as the Maturity Date.

*"Net Position"* is defined in Section 10.6.

*"Notes"* refers collectively to the Revolving Note, the Letter of Credit Note(s) and the Term Note.

*"Obligations"* means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or payable by Borrower thereunder.

*"One-Month UST"* means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the average yield of a range of U.S. Treasury securities adjusted to a constant maturity of one (1) month as published by the Board of Governors of the Federal Reserve System on page H.15 (or, if Lender determines, in its sole discretion, that this rate has become unavailable or unreliable, either temporarily, indefinitely or permanently, Lender may amend this Agreement and/or the Notes by designating a substantially similar rate and add a positive or negative margin (percentage added to or subtracted from the substitute rate) as part of the rate determination) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

*"Payment Date"* means, other than the Revolving Credit Termination Date or any Maturity Date, the first day of each calendar month.

*"Permitted Liens"* is defined in Section 10.10.

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

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

“*Rate Change Date*” means the first calendar day of each calendar month.

“*Reimbursement Date*” is defined in Section 4.3.

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

“*Resource Adequacy Contract*” means any agreement entered into by Borrower for the purpose of complying with CPUC resource adequacy requirements.

“*Revenues*” means the revenues of Borrower, as determined in accordance with GAAP; but excluding (i) any unrealized gain or loss resulting from changes in the value of investment securities, (ii) any gains on the sale or other disposition of fixed or capital assets not in the ordinary course of business and (iii) earnings resulting from any reappraisal, revaluation or write-up of fixed or capital assets.

“*Revolving Credit*” is defined in Section 2.1.

“*Revolving Credit Commitment*” means \$7,000,000.00.

“*Revolving Note*” is defined in Section 2.3.

“*Revolving Credit Termination Date*” means September 1, 2021.

“*SMUD*” is defined in Section 7.5.

“*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.

“*Tangible Unrestricted Net Position*” is defined in Section 10.8.

“*Term Loan*” means the loan evidenced by the Term Note.

“*Term Note*” means that certain Term Note dated as of October 17, 2019, made by Borrower and payable to the order of Lender in the original principal amount of \$1,976,610.13, as amended from time to time.

“*Total Liabilities to Tangible Unrestricted Net Position*” is defined in Section 10.8.

“*UCC*” means the Uniform Commercial Code as enacted in the State of California.

“*UCP*” is defined in Section 4.5.

“*Unreimbursed Amount*” is defined in Section 2.3.

“*Winding-Up*” means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person’s Properties.

## EXHIBIT B

### REVOLVING CREDIT PROMISSORY NOTE

\$7,000,000.00

September \_\_, 2020

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, 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. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of SEVEN MILLION and No/100 Dollars (\$7,000,000.00), pursuant to the terms of that certain Amended and Restated Credit Agreement (the "*Credit Agreement*") dated as of September \_\_, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Revolving Credit Promissory Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on October 1, 2020, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an

agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

This Note amends, restates and replaces in its entirety that certain Revolving Credit Promissory Note dated May 16, 2018, made by Borrower and payable to the order of Lender in the original principal amount of \$11,000,000.00.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

**Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.**

VALLEY CLEAN ENERGY ALLIANCE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT C

### LETTER OF CREDIT NOTE

\$ \_\_\_\_\_

Date: \_\_\_\_\_

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, 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. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of \_\_\_\_\_ (\$\_\_\_\_\_,000.00) pursuant to the terms of that certain Amended and Restated Credit Agreement (the "*Credit Agreement*") dated as of September \_\_, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Letter of Credit Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

**Letter of Credit.** This Note is executed in connection with a Letter of Credit issued by \_\_\_\_\_ ("*Issuing Bank*"), dated \_\_\_\_\_, in the face amount of \$ \_\_\_\_\_, in favor of \_\_\_\_\_ (as Beneficiary) and identified as number: \_\_\_\_\_ (the "*Letter of Credit*").

**Draw or Demand under the Letter of Credit.** Borrower directs and authorizes Lender to immediately advance funds under this Note to repay in full any demand or draw request form Beneficiary under the Letter of Credit (the "*Disbursement*").

**Payment Terms.** Borrower agrees to pay any Disbursement immediately upon demand from Lender and in no event less than 3 calendar days from the date of the Disbursement (the "*Demand Date*"). From the date of the Disbursement to the Demand Date, Borrower shall pay interest only on the unpaid principal balance of this Note (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after the Demand Date (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

**Maturity Date.** The repayment obligations from Borrower to Lender under this Note shall remain in full force and effect until the original Letter of Credit including any and all amendments is surrendered to Issuing Bank undrawn and cancelled to the satisfaction of Issuing Bank.

**Credit Agreement and Cash Collateral.** If (i) the Letter of Credit has been issued and remains unexpired on the Revolving Credit Termination Date, or (ii) the Revolving Credit Commitment terminates or is unavailable to Borrower for any reason prior to the surrender of the Letter of Credit as provided above, or (iii) the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, upon request by Lender, Borrower shall immediately provide

cash collateral to Lender with a value of not less than 110% of the stated principal amount of this Note or the amount by which the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, as applicable.

**Default and Acceleration.** Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

**Miscellaneous.** This Note and the holder hereof are entitled to all of the rights and benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.



**Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.**

VALLEY CLEAN ENERGY ALLIANCE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**REQUEST FOR ADVANCE**

**\$7,000,000 REVOLVING CREDIT**

**VALLEY CLEAN ENERGY ALLIANCE (“BORROWER”) HEREBY REQUESTS AN ADVANCE UNDER THE REVOLVING CREDIT IN ACCORDANCE WITH THE AMENDED AND RESTATED CREDIT AGREEMENT DATED AS OF SEPTEMBER \_\_\_, 2020, BETWEEN BORROWER AND RIVER CITY BANK (“LENDER”).**

**DATE OF REQUEST:** \_\_\_\_\_

**AMOUNT OF REQUESTED ADVANCE:** \$ \_\_\_\_\_

**PURPOSE OF ADVANCE:**

- \_\_\_ - **THIS ADVANCE WILL BE USED TO FUND RESERVES IN ACCORDANCE WITH THE FOLLOWING POWER PURCHASE AGREEMENT: \_\_\_\_\_.**
- \_\_\_ - **THIS ADVANCE WILL COVER THE POWER PURCHASE PAYMENT FOR THE MONTH ENDING \_\_\_\_\_, 20\_\_\_. YOU ARE AUTHORIZED TO DEPOSIT LOAN PROCEEDS INTO CHECKING ACCOUNT: 8855413324**
- \_\_\_ - **ATTACHED IS THE INVOICE FOR SUCH POWER PURCHASE PAYMENT.**
- \_\_\_ - **YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO THE POWER SUPPLIER AS FOLLOWS:**

**COMPANY NAME:** \_\_\_\_\_

**WIRE INSTRUCTIONS:**

**BANK NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**ROUTING NUMBER:** \_\_\_\_\_

**ACCOUNT NUMBER:** \_\_\_\_\_

**OTHER REFERENCE:** \_\_\_\_\_

**BORROWER CERTIFICATION:**

**BORROWER HEREBY CERTIFIES THAT:**

- (I) AFTER MAKING THE ADVANCE REQUESTED ON THE ADVANCE DATE ABOVE, THE SUM OF ALL OUTSTANDING ADVANCES WILL NOT EXCEED THE REVOLVING CREDIT COMMITMENT THEN IN EFFECT;
  
- (II) THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THE CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH ADVANCE DATE TO THE SAME EXTENT AS THOUGH MADE ON AND AS OF SUCH DATE, EXCEPT TO THE EXTENT SUCH REPRESENTATIONS AND WARRANTIES SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH EARLIER DATE; PROVIDED THAT, IN EACH CASE, SUCH MATERIALITY QUALIFIER SHALL NOT BE APPLICABLE TO ANY REPRESENTATIONS AND WARRANTIES THAT ALREADY ARE QUALIFIED OR MODIFIED BY MATERIALITY IN THE TEXT THEREOF; AND
  
- (III) NO EVENT HAS OCCURRED AND IS CONTINUING OR WOULD RESULT FROM THE CONSUMMATION OF THE BORROWING CONTEMPLATED HEREBY THAT WOULD CONSTITUTE AN EVENT OF DEFAULT OR A DEFAULT.
  
- (IV) THIS ADVANCE IS BEING USED FOR THE PURPOSE INTENDED AS PROVIDED IN THE CREDIT AGREEMENT AND NO PORTION OF THIS ADVANCE IS BEING USED TO FUND OPERATING LOSSES.

VALLEY CLEAN ENERGY ALLIANCE

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

## FIRST MODIFICATION OF TERM NOTE

This FIRST MODIFICATION OF TERM NOTE (this "*Modification*") is entered into as of August \_\_\_, 2020, by and between VALLEY CLEAN ENERGY ALLIANCE, 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. ("*Borrower*"), and RIVER CITY BANK ("*Lender*"), with reference to the following facts:

WHEREAS, Borrower has executed and delivered to Lender that certain Term Note (the "*Term Note*") dated as of October 17, 2019, made by Borrower and payable to the order of Lender in the original principal amount of \$1,976,610.13;

WHEREAS, the Term Note evidences a loan (the "*Term Loan*") from Lender to Borrower representing the conversion of outstanding advances under a revolving line of credit in accordance with the terms of that certain Credit Agreement (the "*Original Credit Agreement*") dated as of May 16, 2018, between Borrower and Lender;

WHEREAS, Borrower and Lender have entered into that certain Amended and Restated Credit Agreement (the "*Amended and Restated Credit Agreement*") dated as of August \_\_\_, 2020, pursuant to which the parties have agreed to certain modifications of the Original Credit Agreement, including but not limited to an extension of the Revolving Credit Termination Date (as such term is defined therein) to September 1, 2021;

WHEREAS, it is a condition to the Amended and Restated Credit Agreement that the maturity date of the Term Loan be advanced to coincide with the Revolving Credit Termination Date;

NOW THEREFORE, in consideration of the foregoing recitals and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree to modify the Term Note as follows:

1. Borrower will pay this loan in equal principal payments of \$32,943.50 each. Borrower's next principal payment is due September 1, 2020, and all subsequent principal payments are due on the same day of each month after that. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning September 1, 2020, with all subsequent interest payments to be due on the same day of each month after that. Borrower's final payment is due **September 1, 2021**, and will be for all outstanding principal and all accrued interest not yet paid.

Except as expressly modified herein, the terms of the Term Note shall remain unchanged and in full force and effect. Nothing in this Modification shall constitute a satisfaction of the Term Loan or a waiver of Lender's right to require strict performance of the Term Loan and all other obligations of Borrower to Lender.

This Modification contains the entire agreement between the parties with respect to the matters addressed herein and supersedes all prior agreements and understandings with respect to thereto. This Modification may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

IN WITNESS WHEREOF, the undersigned have executed this Modification as of the date first written above.

VALLEY CLEAN ENERGY ALLIANCE

By: \_\_\_\_\_

Name: Mitch Sears

Its: Interim General Manager

RIVER CITY BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2020-\_\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE  
AUTHORIZING THE EXTENSION OF REVOLVING LINE OF CREDIT WITH RIVER CITY BANK AND  
MODIFICATION TO TERM NOTE**

**WHEREAS**, the Valley Clean Energy Alliance (“VCE”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), the City of Woodland and the City of Winters (“Cities”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs;

**WHEREAS**, VCEA solicited competitive bids for banking and credit services and selected River City Bank (RCB) to lend VCEA up to \$11 million as a revolving line of credit to fund power purchases as part of administrating CCE programs, which had a term of 12-months at variable rates with an option to extend another 6 months and was convertible to a five-year term loan with a fixed interest rate;

**WHEREAS**, on May 10, 2018, the VCEA Board via Resolution 2018-012 approved the Credit Agreement between VCEA, as borrower, and the RCB, as lender;

**WHEREAS**, the \$11 million revolving line of credit expired on May 15, 2019 and on April 11, 2019, the Board via Resolution 2019-005 extended the line of credit for another 6 months, extending the term to November 15, 2019;

**WHEREAS**, on October 10, 2019, the Board approved via Resolution 2019-014 converting the \$1,676,610 Revolving Line of Credit (RLOC) balance to an amortized 5-year term loan; approved the renewal terms consistent with the October 3, 2019 term sheet for the existing RLOC for a new expiration date of November 15, 2020; and authorized VCE interim General Manager, in consultation with VCE Legal Counsel, to negotiate the Credit Agreement with RCB based on the renewal terms;

**WHEREAS**, Since November 15, 2019, VCE has received a series of extensions to the RLOC from RCB. The current renewal expired on August 31, 2020; and,

**WHEREAS**, RCB and VCE have agreed in principal to a one-year extension of the RLOC to September 1, 2021, with a revised limit of \$7 million, of which all is available for Letters of Credit and \$5 million is available for Cash Advances to fund operational needs. Additionally, RCB and VCE have agreed in principal to a modification to the Term Note, including an earlier Final Payment date of September 1, 2021, which may be extended by RCB at the next renewal period.

**NOW, THEREFORE,** the Board of the Valley Clean Energy Alliance resolves as follows:

Approves the attached draft Amended and Restated Credit Agreement (RLOC Agreement) and attached draft Modification of Term Note from River City Bank (RCB), and authorizes the Interim General Manager to conduct any final negotiations and sign all necessary related documents on behalf of VCE.

**PASSED, APPROVED, AND ADOPTED,** at a regular meeting of the Valley Clean Energy Alliance, held on the \_\_\_\_ day of \_\_\_\_\_ 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Don Saylor, VCE Chair

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Alisa M. Lembke, VCE Board Secretary

Attachments:

1. Draft Amended and Restated Credit Agreement
2. Draft Modification of Term Note from River City Bank