

## SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT

This SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT (this “*Second Amendment*”) is dated June \_\_, 2021 (the “*Second Amendment Date*”), between the CITY OF SAN JOSE, CALIFORNIA (the “*City*”), and BARCLAYS BANK PLC (together with its successors and assigns, the “*Bank*”). All capitalized terms herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

### WITNESSETH

WHEREAS, the City and the Bank have previously entered into that certain Revolving Credit Agreement dated as of November 1, 2018, as amended by that certain First Amendment to Revolving Credit Agreement dated May 10, 2019 (as so amended, the “*Agreement*”), related to a community-wide electricity program known as “San Jose Clean Energy”;

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

WHEREAS, the City has requested that the Bank consent to certain amendments to the Agreement, and the Bank has agreed to consent to such amendments to the Agreement subject to the terms and conditions set forth herein;

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

#### SECTION 1. AMENDMENT.

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

1.01. The definitions of “Aggregate Annual Debt Service Requirement,” “Community Energy Program Commercial Paper,” “Debt Service Coverage Ratio,” “Net Revenues,” “Revenues,” “Swap Contract,” and “Total Outstandings” in Section 1.01 of the Agreement are hereby amended and restated in their entireties and as so amended and restated shall read as of the Effective Date as follows:

“*Aggregate Annual Debt Service Requirement*” means, for any period for which the Debt Service Coverage Ratio is required to be maintained pursuant to Section 5.14, an amount equal to the principal of and interest on the Total Outstandings and any other Debt payable from Revenues or Net Revenues due and payable during such period; provided that, it is assumed for purposes of the determination of the Aggregate Annual Debt Service Requirement, that the principal of Debt payable by the Community Energy Program to the City and/or the Authority shall not be considered due

and payable except to the extent the payment thereof is required under the terms of such Debt (and optional or unscheduled payments shall not be considered due and payable), and that interest on Debt payable to the City and/or the Authority shall be included in the determination of Net Revenues and will not be included in the determination of the Aggregate Annual Debt Service Requirement; provided further that, solely for the purpose of satisfying the Debt Service Coverage Ratio for the applicable period ended December 31, 2022, and each applicable period thereafter, the aggregate amount so determined shall be reduced by the lesser of (i) the aggregate amount then on deposit in the Operating Reserve Account and (ii) \$20,000,000. For the avoidance of doubt, as used in this definition of Aggregate Annual Debt Service Requirement, (A) “principal of and interest on Total Outstandings” means the sum of (i) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on or with respect to the Loans and the Letters of Credit plus all Unreimbursed Amounts during the applicable period for which the Debt Service Coverage Ratio is required to be maintained pursuant to Section 5.14, plus (ii) the product obtained by multiplying (x) the average of the amounts available to be drawn under outstanding Letters of Credit as at the end of each of the last three months of the applicable period by (w), in the event the applicable period consists of one fiscal quarter, then 2.5%; (x) in the event the applicable period consists of two fiscal quarters, then 5%; (y) in the event the applicable period consists of three fiscal quarters, then 7.5%; and (z) in the event the applicable period consists of four fiscal quarters, then 10%; and (B) the term “Debt” as used in this definition shall not include any amounts payable to the City or the Authority from the Community Energy Program, including without limitation, loans made by the City to the Community Energy Program with proceeds of the Community Energy Program Commercial Paper, up to a total amount of \$100,000,000, all which shall be subordinate in priority of payment to the Obligations payable to the Bank under this Agreement.

*“Community Energy Program Commercial Paper”* means City of San José Financing Authority Taxable Lease Revenue Commercial Paper Notes of any series designation issued by the Authority for the benefit of the City to finance the City’s purchase of power for the Community Energy Program and the payment of other operating costs of the Community Energy Program in the aggregate principal amount not to exceed at any time \$100,000,000.

*“Debt Service Coverage Ratio”* means, determined as of the last day of any fiscal quarter of the City, the ratio of (i) Net Revenues to (ii) the Aggregate Annual Debt Service Requirement, in each case

as determined for the period of four consecutive fiscal quarters ended on the last date of such fiscal quarter.

“*Net Revenues*” means, for any period the same is to be determined, the Revenues for such period less (i) all Operation and Maintenance Expenses during such period, including, without limitation, amounts required to be paid by the City pursuant to the terms of Power Purchase Agreements during such period, and less (ii) all interest on Debt payable by the Community Energy Program to the City and/or the Authority during such period.

“*Revenues*” means, for any period, all amounts collected and accrued by the City with respect to the Community Energy Program during such period, together with income, earnings and profits therefrom, plus the incremental principal amount loaned by the City to the Community Energy Program during such period but in no event in an aggregate amount in excess of \$100,000,000.

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

“*Total Outstandings*” means the aggregate Outstanding Amount of all Loans and L/C Obligations.

1.02. Section 4.06 of the Agreement is hereby amended and restated in its entirety and as so amended and restated shall read as follows:

*Section 4.06. Financial Condition.* (a) The audited financial statements of the City for the fiscal year ended June 30, 2017, and all audited financial statements of the City delivered since that date have been prepared in conformity with GAAP (except as noted therein) and fairly present, in all material respects, the financial condition of the City as of the dates thereof. Since the date of the audited financial statements most recently furnished to the Bank there has been no material adverse change in the financial condition of the General Fund of the City.

(b) The audited financial statements of the Community Energy Program for the fiscal year ended June 30, 2017, and all unaudited quarterly statements of the Community Energy Program, delivered to the Bank since that day, have been prepared in conformity with GAAP (except as noted therein) and fairly present, in all material respects, the financial condition of the Community Energy Program, as of the dates thereof. Since the date of the audited financial statements or unaudited quarterly statements of the Community Energy Program, whichever was most recently furnished to the Bank, there has been no material adverse change in the business or affairs of the Community Energy Program.

1.03. Section 5.01(b) of the Agreement is hereby amended by replacing each instance of the words “an Authorized Officer” with “two Authorized Officers.”

1.04. Section 5.01(c) of the Agreement is hereby amended and restated in its entirety and as so amended and restated read as follows:

(c) *Quarterly and Monthly Reports.* (A) Within forty five (45) days after the end of each fiscal quarter of the City, the City will deliver to the Bank (i) financial statements (which delivery shall be deemed to have occurred upon such financial statements becoming available at <http://www.sanjosecleanenergy.org/> and notice of such posting having been provided to the Bank) consisting of a statement of net position and cash balances of the Community Energy Program as at the end of such fiscal quarter and a statement of revenues and expenses and a statement of cash flows of the Community Energy Program for such fiscal quarter, (ii) the aggregate principal amount of outstanding Debt payable by the Commercial Energy Program to the City or the Authority, if any, as of such date and (iii) statistics on number of consumers enrolled in Community Energy and energy-usage statistics therefor, the foregoing together accompanied by a letter from two Authorized Officers addressed to the Bank, substantially in the form of Exhibit D attached hereto, (x) stating that no Potential Event of Default or Event of Default has occurred, or if such an event has occurred,

indicating the nature of such event and the action which the City proposes to take with respect thereto and (y) demonstrating compliance with Sections 5.14 and 5.15 hereof as of the end of such fiscal quarter, and (B) within fifteen (15) Business Days after July 31, 2021 and the last day of each month thereafter, the City will deliver to the Bank a trial balance showing the cash balances of the Community Energy Program as at the end of such month;

1.05. Section 5.14 of the Agreement is hereby amended and restated in its entirety and as so amended and restated shall read as follows:

*Section 5.14. Debt Service Coverage Ratio.* (a) Commencing on September 30, 2021, for the period of one fiscal quarter ended September 30, 2021; as of December 31, 2021, for the period of two consecutive fiscal quarters ended December 31, 2021; as of March 31, 2022, for the period of three consecutive fiscal quarters ended March 31, 2022; and as of the last day of each fiscal quarter thereafter for the period of four consecutive fiscal quarters ended on such day, in each case the Debt Service Coverage Ratio shall be not less than 1.25 to 1. The parties hereto agree that the foregoing modification to the covenant of the City regarding the Debt Service Coverage Ratio shall become effective retroactively to the Effective Date.

(b) For each date of any proposed Credit Extension to occur on or after the fourth (4th) anniversary of the Effective Date, the Debt Service Coverage Ratio shall be not less than 1.25 to 1 as of the last day of the fiscal quarter most recently ended, including, for purposes of determining such Debt Service Coverage Ratio, such Credit Extension.

1.06. Section 5.15 of the Agreement is hereby amended and restated in its entirety and as so amended and restated shall read as follows:

*Section 5.15. Operating Reserve Requirement.* From and including: (a) August 31, 2019, to but excluding November 15, 2019, the City shall at all times during such period maintain not less than \$10,000,000 in the Operating Reserve Account; (b) November 15, 2019, to but excluding the Second Amendment Date, the City shall at all times during such period maintain not less than \$15,000,000 in the Operating Reserve Account; and (c) from and after the Second Amendment Date, except as otherwise provided in Section 6.09 hereof, the City shall at all times maintain not less than \$20,000,000 in the Operating Reserve Account.

1.07. The lead in language of Article VI shall be amended by adding the phrase “and will not permit the Authority to” after the phrase “it will not.”

1.08. Section 6.02 of the Agreement is hereby amended and restated in its entirety and as so amended and restated shall read as follows:

*Section 6.02. Other Debt.* Incur, assume or permit to exist any (a) Debt with a claim to payment from the Net Revenues without written consent of the Bank, (b) loans from a fund of the City to the Community Energy Program that would exceed an aggregate principal amount of \$100,000,000, or (c) loans from the Authority to the Community Energy Program that would exceed, when combined with loans from the City to the Community Energy Program, an aggregate principal amount of \$100,000,000, and in any event no such loans under clause (c) shall be incurred, assumed or permitted to exist except upon the prior delivery by the City to the Bank of evidence satisfactory to the Bank that the Authority has acknowledged and agreed that (i) such loans from the Authority to the Community Energy Program are subordinate in priority of payment to the Obligations hereunder in all respects, and (ii) upon the occurrence of an Event of Default or Potential Event of Default, may be repaid to the Authority only after the expiry date of the Letters of Credit last to occur and the date on which all Obligations hereunder have been satisfied in full. For the avoidance of doubt, the City may make any loans to the Community Energy Program that satisfy the requirements of this Section 6.02 from any source, including without limitation, proceeds of Community Energy Program Commercial Paper.

1.09. Section 6.05 of the Agreement shall be amended by the inclusion of the following sentence: “The Bank hereby agrees that City may reference the Bank in any offering document if, and solely to the extent that the Governmental Accounting Standard Board requires the City to reference the Bank and the Agreement in the financial statements of the City, and such financial statements are included, either expressly or by reference, in any such offering document or reference thereof is required pursuant to the requirements of applicable federal securities laws, including, without limitation, Securities and Exchange Commission Rule 10b-5.”

1.10. Section 6.09 of the Agreement is hereby amended and restated in its entirety and as so amended and restated shall read as follows:

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

(i) Any portion of the Revenues or Net Revenues for the payment of the principal of the Debt payable from the Community

Energy Program to the City or the Authority, if any, unless the City delivers a certificate to the Bank, in reasonable detail, demonstrating that (A) the amount held in the Operating Reserve Account, together with the unrestricted cash of the Community Energy Program, has, as of the last day of the month immediately preceding the date of such payment and as of the last day of the month for at least three (3) of the four (4) months immediately preceding such month, has been, and after such payment will remain, equal to or in excess of \$50,000,000, (B) the Debt Service Coverage Ratio is not less than 1.25 to 1 as of the last day of the fiscal quarter most recently ended and (C) no Event of Default has occurred and is continuing; or

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

1.11. The Agreement is hereby amended by adding the following Section 6.10 thereto:

*Section 6.10. Subordination.* All loans from the City, including, without limitation, from the General Fund of the City, to the Community Energy Program (i) shall be subordinate in priority of payment to the Obligations hereunder in all respects, and (ii) upon the occurrence of an Event of Default or Potential Event of Default, may be repaid to the City only after the last expiry date of the Letters of Credit to occur and the date on which all Obligations hereunder have been satisfied in full.

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

## SECTION 2. CONDITIONS PRECEDENT.

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

2.01. Delivery by the City and the Bank of an executed counterpart of this Second Amendment.

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

2.03. Receipt by the Bank of a (i) certified copy of a resolution of the City authorizing the execution and delivery of this Second Amendment and the performance of

the City's obligations under the Agreement, as amended hereby, and (ii) certified copies of resolutions of the City and the Authority approving the issuance by the Authority of Community Energy Program Commercial Paper in an amount not less than \$95,000,000, subject to the satisfaction of certain conditions.

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

2.05. Payment to the Bank of a non-refundable amendment fee in the amount of \$5,000 as provided for in Section 2.08(b) of the Agreement.

2.06. Payment to Chapman and Cutler LLP of the reasonable legal fees and expenses of counsel to the Bank in an amount not to exceed \$25,000.

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

### SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

3.01. The City hereby represents and warrants that the following statements are true and correct as of the Second Amendment Date after giving effect to this Second Amendment:

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

(b) no Potential Event of Default or Event of Default has occurred and is continuing or would result from the execution of this Second Amendment.

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

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

(b) no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Second Amendment or the Agreement, as amended hereby, that has not been obtained; and



(c) this Second Amendment has been duly authorized, executed and delivered by the City and this Second Amendment and the Agreement, as amended hereby, constitute legal, valid and binding obligations of the City enforceable against the City in accordance with their terms subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally or limitations of remedies against departments of the State of California.

SECTION 4. MISCELLANEOUS.

4.01. Except as specifically amended by this Second Amendment, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Second Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to, and shall mean and be a reference to, the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. THIS SECOND AMENDMENT, SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK; *PROVIDED*, THAT THE POWER AND AUTHORITY OF THE CITY TO EXECUTE, DELIVER AND PERFORM ITS OBLIGATIONS UNDER THIS SECOND AMENDMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA; *PROVIDED, HOWEVER*, THAT THE POWER AND AUTHORITY OF THE CITY TO ENTER INTO ANY AND ALL POWER PURCHASE AGREEMENTS AND SUCH AGREEMENTS THEMSELVES ARE GOVERNED BY THE LAWS OF THE STATE UNLESS OTHERWISE PROVIDED THEREIN.

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

[SIGNATURE PAGE FOLLOWS]

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

CITY OF SAN JOSE, CALIFORNIA

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

Name: Julia H. Cooper

Title: Director of Finance

APPROVED AS TO FORM

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

Name: Karin M. Murabito

Title: Senior Deputy City Attorney

Signature Page to Second Amendment to Revolving Credit Agreement

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

BARCLAYS BANK PLC

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

Name: Cassandra Bolz

Title: Authorized Signatory for and on behalf of  
Barclays Bank PLC

Signature Page to Second Amendment to Revolving Credit Agreement

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

**EXHIBIT A**

**EXHIBIT D**

**FORM OF COMPLIANCE CERTIFICATE**

Financial Statement Date: \_\_\_\_\_, \_\_\_\_\_

To: Barclays Bank PLC, as Bank

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of November 1, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*”)(the terms defined therein being used herein as defined in the Agreement), between City of San Jose, California (the “*City*”), and Barclays Bank PLC, (the “*Bank*”).

The undersigned Authorized Officers hereby certify as of the date hereof that they are the [Director of Finance] and the [Director of the Community Energy Department] of the City, and that, as such, they are authorized to execute and deliver this Certificate to the Bank on the behalf of the City, and that:

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

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

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

3. The aggregate principal amount of Community Energy Program Commercial Paper outstanding as of the Financial Statement Date set forth above was \$\_\_\_\_\_.

4. That balance in the Operating Reserve Account as of the Financial Statement Date set forth above was \$\_\_\_\_\_.

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

**[select one:]**

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

**--or--**

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

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

**[select one:]**

[except to the extent the same expressly relate to an earlier date.]

**--or--**

[except to the extent the same expressly relate to an earlier date, and except as follows:]

7. Attached as Exhibit A is a calculation of the Debt Service Coverage Ratio as the last day of the fiscal quarter most recently ended.

[Signature Page Follows on Next Page]

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

CITY OF SAN JOSE, CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: [Director of Finance]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: [Director of Community Energy  
Department]

Exhibit A to Compliance Certificate

[Calculation of Debt Service Coverage Ratio]