

CREDIT AGREEMENT

Dated as of March 29, 2018,

between

PUBLIC UTILITIES COMMISSION OF  
THE CITY AND COUNTY OF SAN FRANCISCO

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

Relating to



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**EXHIBITS**

Exhibit A – Five Year Plan

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Exhibit C – Form of Compliance Certificate

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This **CREDIT AGREEMENT**, dated as of March 29, 2018 (together with any amendments or supplements hereto, this “*Agreement*”), is between the PUBLIC UTILITIES COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO (together with its successors and assigns, the “*Commission*”) and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the “*Bank*”).

**WITNESSETH:**

WHEREAS, pursuant to the charter of the City and County of San Francisco (the “*City*”), the management and control of the City’s community choice aggregation program (the “*CCA Program*”) is the responsibility of the Commission (Board of Supervisors Ordinance No. 146-07, Section 1(a));

WHEREAS, pursuant to Ordinance 86-04 of the Board of Supervisors of the City (the “*Board*”) established the CCA Program, called CleanPowerSF, and pursuant to Ordinances 146-07, 147-07 and 232-09 (collectively, the “*Ordinances*”) implemented the CCA Program through the work of the Commission in consultation with the San Francisco Local Agency Formation Commission (Board of Supervisors);

WHEREAS, pursuant to Section 5 of Ordinance 147-07 of the Board, the Board adopted a Draft Implementation Plan and Statement of Intent for the CCA Program (the “*Draft IP*”);

WHEREAS, since its adoption in 2004, the Draft IP has been revised on several occasions, most recently by the Updated Implementation Plan and Statement of Intent certified by the California Public Utilities Commission on August 26, 2015 (together with all future amendments and modifications thereto, the “*IP*”);

WHEREAS, pursuant to the IP, the Commission desires to purchase clean power on behalf of CleanPowerSF by entering into power purchase agreements (each, a “*PPA*”) with providers of clean power (each, a “*PPA Counterparty*”) and to provide such clean power to those of its customers who elect to participate in the CCA Program (“*Customers*”);

WHEREAS, the Commission has requested that the Bank make available to the Commission the extensions of credit referenced herein on the terms and conditions, and for the purposes, contained herein; and

WHEREAS, the Bank is willing to make available to the Commission the extensions of credit referenced herein on the terms and conditions, and for the purposes, contained herein.

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

**ARTICLE 1**

**DEFINITIONS**

Section 1.1 **Definitions**. As used in this Agreement:

“*ABR*”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest at a rate determined by reference to the Alternate Base Rate.

“*Adjusted LIBO Rate*” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“*Adopted Budget*” means the budget or budgets prepared by the Commission, approved by the Board and signed by the Mayor of the City.

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

“*Affiliate Loan*” means the Existing Power Enterprise Loan or any other unsecured loan made to the CleanPowerSF Program by the Commission’s Power Enterprise, water enterprise or wastewater enterprise or by the City, in each case, the payment of which is expressly subordinate to the payment in full of the Commission’s payment Obligations under this Agreement and under any other Parity Debt.

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

“*Alternate Base Rate*” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day plus ½ of 1%, (b) the NYFRB Rate in effect on such day plus 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 hereof, then the Alternate Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Amended JPMorgan Letters of Credit*” means Existing JPMorgan Letters of Credit as amended on the Closing Date.

“*Annual Debt Service*” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, the Letters of Credit, LC Disbursements, other Parity Debt, Affiliate Loans and other Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) (i) in the case of Working Capital Loans, Reimbursement Loans, other Parity Debt comprising working capital loans, Affiliate Loans comprising working capital loans and other Subordinate Debt comprising working capital loans, the quotient obtained by dividing the average daily outstanding principal balance of the Working Capital Loans, Reimbursement Loans, other Parity Debt comprising working capital loans, Affiliate Loans comprising working capital loans and other Subordinate Debt comprising working capital loans during such Fiscal Year or other designated four fiscal quarter period by 3, and (ii)

in the case of Revolving Credit Exposure (excluding therefrom Working Capital Loans and the Reimbursement Loans), other Parity Debt (other than working capital loans), Affiliate Loans (other than working capital loans) and other Subordinate Debt (other than working capital loans) the quotient obtained by dividing the average daily outstanding principal balance of the Revolving Credit Exposure (excluding therefrom Working Capital Loans and the Reimbursement Loans), other Parity Debt (other than working capital loans), Affiliate Loans (other than working capital loans) and other Subordinate Debt (other than working capital loans) during such Fiscal Year or other designated four fiscal quarter period by 10.

“*Anti-Corruption Laws*” shall mean all laws, rules, and regulations of any jurisdiction applicable to the Commission from time to time concerning or relating to bribery or corruption.

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

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

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

“*Authorized Representative*” means each of the General Manager of the San Francisco Public Utilities Commission, Assistant General Manager and Chief Financial Officer, Business Services, Deputy Chief Financial Officer, Financial Services, Debt Manager, Financial Planning, Utility Specialist, Financial Planning, Controller of the City and County of San Francisco, Director of Public Finance, and any other individual designated from time to time as an “*Authorized Representative*” in a *certificate* executed by the General Manager of the San Francisco Public Utilities Commission and delivered to the Bank.

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

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

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

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

“*Basic Documents*” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) any agreements entered into in connection with this Agreement by the Commission, including letter of credit applications and any agreements between the Commission and the Bank regarding the Letter of Credits or the respective rights and obligations

between the Commission and the Bank in connection with the issuance of Letters of Credit, (c) the Fee Agreement, and (d) and any other documents prepared in connection with the other Basic Documents, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“*Board*” has the meaning set forth in the recitals hereof.

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

“*Borrowing Request*” means a request by the Commission for a Borrowing in accordance with Section 2.3.

“*Budget*” has the meaning set forth in Section 5.1(a)(v) hereof.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“*Cash Collateral Loan*” means a Loan (or a portion of a Loan) the proceeds of which are deposited with a Person other than the Commission in order to secure the Commission’s payment obligations under one or more PPAs or to make a termination payments under PPAs.

“*CCA Program*” has the meaning set forth in the recitals hereof.

“*Change in Law*” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by the Bank (or, for purposes of Section 2.12(b), by any lending office of the Bank or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “*Change in Law*,” regardless of the date enacted, adopted or issued.

“*Charter*” has the meaning set forth in the recitals hereof.

“*City*” has the meaning set forth in the recitals hereof.

“*Clean Down Period*” means, for each Fiscal Year, any period of thirty consecutive days during such Fiscal Year; provided, however, that no such period shall include any March 31, June 30, September 30 or December 31.

“*CleanPowerSF Program*” means the “CleanPowerSF” business unit within the Power Enterprise established for the management and control of the CCA Program in accordance with the IP.



“*CleanPowerSF Program Debt*” means Debt of the Commission secured by a Lien over CleanPowerSF Revenues, including CleanPowerSF Net Revenues.

“*CleanPowerSF Net Revenues*” means, as of any date of determination, the amount obtained by subtracting CleanPowerSF Operating and Maintenance Costs from CleanPowerSF Revenues, in each case as of such date.

“*CleanPowerSF Operating and Maintenance Costs*” means the reasonable and necessary costs paid or incurred by Commission for maintaining and operating the CleanPowerSF Program, 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 CleanPowerSF Program in good repair and working order, and including all administrative costs of Commission that are charged directly or apportioned to the maintenance and operation of the CleanPowerSF Program, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Commission such as fees and expenses of an independent certified public accountant and consultants, and including Commission’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 Commission under take or pay contracts.

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

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

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

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

“*Commitment*” means the commitment of the Bank to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of the Bank’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.8. The initial amount of the Commitment is \$75,000,000.

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

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

“*Customers*” has the meaning set forth in the recitals hereof.

“*Debt*” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“*Debt Service Coverage Ratio*” means, for any fiscal quarter of the Commission, the quotient obtained by dividing CleanPowerSF Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter; provided, however, for the fiscal quarter ended (i) June 30, 2018, such determination shall be made for the fiscal quarter ended June 30, 2018, (ii) September 30, 2018, such determination shall be made for the two consecutive fiscal quarter periods ended September 30, 2018 and (iii) December 31, 2018, such determination shall be made for the three consecutive fiscal quarter periods ended December 31, 2018.

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

“*Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

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

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

“*Draft IP*” has the meaning set forth in the recitals hereof.

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

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

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

pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

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

“Eurodollar” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan, or the Loan comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

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

“Excess Revenues” means, for any period, the CleanPowerSF Revenues for such period that remain after deducting: (i) CleanPowerSF Operating and Maintenance Costs for such period, (ii) Obligations due and payable in such period, (iii) debt service and fees due and payable in respect of Parity Debt in such period (solely to the extent such Parity Debt was incurred or issued in accordance with the terms of this Agreement) and (iv) so long as no Event of Default has occurred and is continuing, interest on Affiliate Loans and Subordinate Debt in such period (solely to the extent any such Affiliate Loan or Subordinate Debt was incurred or issued in accordance with the terms of this Agreement).

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

“Existing JPMorgan Debt Documents” means the Reimbursement Agreement, dated as of February 10, 2016, between the Commission and JPMorgan Chase Bank, National Association, together with all amendments, modifications and supplements thereto or restatements thereof (the “Existing JPMorgan Reimbursement Agreement”), the “Fee Agreement” (as defined in the Existing JPMorgan Reimbursement Agreement) and the Letters of Credit (as defined in the Existing JPMorgan Reimbursement Agreement).

“Existing JPMorgan Letters of Credit” means all letters of credit issued by JPMorgan Chase Bank, National Association and outstanding under the Existing JPMorgan Reimbursement Agreement immediately prior to the Closing Date.

“Existing JPMorgan Obligations” means all payment obligations of the Commission owing, or to become owing, to JPMorgan Chase Bank, National Association under the Existing JPMorgan Debt Documents.

“Existing JPMorgan Reimbursement Agreement” has the meaning given thereto in the defined term “Existing JPMorgan Debt Documents”.

“Existing Power Enterprise Loan” means the loan or loans in the aggregate amount of \$8,000,000 made prior to the date hereof from the Hetch Hetchy Power Enterprise Fund to the CleanPowerSF Program pursuant to Resolution 15-0103 and Resolution 15-0243 of the Commission and Ordinance 120-15 and Ordinance 226-15 of the Board.

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

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

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

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

“*Fitch*” means Fitch Ratings, Inc.

“*Five Year Plan*” means the plan attached hereto as Exhibit A as the same may be amended or modified in accordance with Section 6.3.

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

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

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

“*Governmental Authority*” means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

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

“*Impacted Interest Period*” has the meaning assigned to it in the definition of “LIBO Rate.”

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

“*Interest Election Request*” means a request by the Commission to convert or continue a Revolving Borrowing (other than an ABR Borrowing of a Reimbursement Loan) in accordance with Section 2.5.

“*Interest Payment Date*” means, (a) with respect to any ABR Loan, the last day of each March, June, September and December, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months duration after the first day of such Interest Period.

“*Interest Period*” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“*Interpolated Rate*” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Bank (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available that exceeds the Impacted Interest Period, in each case, at such time.

“*Investment Policy*” means the investment guidelines of the City as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

“*IP*” has the meaning set forth in the recitals hereof.

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

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

“*LC Exposure*” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time (including the Amended JPMorgan Letters of Credit if

such Letters of Credit remain outstanding at such time) plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Commission at such time.

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

“*LIBO Rate*” means, with respect to any Eurodollar Borrowing for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “*Impacted Interest Period*”) then the LIBO Rate shall be the Interpolated Rate.

“*LIBO Screen Rate*” means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion, provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

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

“*Loans*” means the loans made by the Bank to the Commission pursuant to this Agreement, including, without limitation, Cash Collateral Loans, the Working Capital Loans and the Reimbursement Loans.

“*Master Trust Indenture*” means the Trust Indenture, dated as of May 1, 2015, between the Commission and U.S. Bank National Association, as trustee for the holders from time to time of the Commission’s power revenue bonds.

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

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

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

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

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

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Banking Day, for the immediately preceding Banking Day); provided that if none of such rates are published for any day that is a Business Day, the term “*NYFRB Rate*” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Bank from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Obligations*” means all obligations of the Commission to the Bank or any Participant arising under or in relation to this Agreement and the Fee Agreement, including repayment of Loans and LC Disbursements.

“*Operating Reserve*” means a reserve fund established by the Commission to provide a reserve that can be utilized by the Commission to pay CleanPowerSF Operating and Maintenance Costs when Revenues are insufficient.

“*Operating Reserve Requirement*” means, for any Fiscal Year of the Commission, an amount equal to 90 days of the CleanPowerSF annual power supply budget, data and billing contracts costs for such Fiscal Year included in the Five Year Plan, calculated by dividing the amount in the Five Year Plan for such Fiscal Year by 365 and multiplying the amount by 90.

“*Ordinances*” has the meaning set forth in the recitals hereof.

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

“*Other Revenue Documents*” has the meaning set forth in Section 5.1(c)(i) hereof.

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

“*Overnight Bank Funding Rate*” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S. -managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Banking Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“*Parity Debt*” means any CleanPowerSF Program Debt issued or incurred by the Commission the payment of which is on parity with the Commission’s payment Obligations under this Agreement.

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

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

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

“*Power Enterprise*” means the Commission’s Power Enterprise established to provide electric power and related services to the City and its departments, agencies and commissions as well as other customers both in and outside of the City.

“*PPA*” has the meaning set forth in the recitals hereof.

“*PPA Counterparty*” has the meaning set forth in the recitals hereof.

“*Prime Rate*” means the rate of interest per annum publicly announced from time to time by the Bank as its prime rate in effect at its office located at 270 Park Avenue, New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

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

“*Rate Stabilization Reserve*” means a reserve fund established by the Commission to provide a reserve that can be utilized by the Commission to pay for unanticipated changes in budgeted costs of CleanPowerSF Program that may otherwise require additional charges through increased Customer rates and/or charges.

“*Rate Stabilization Reserve Requirement*” means, for any Fiscal Year of the Commission, an amount equal to 15% of the CleanPowerSF Revenues included in the Five Year Plan for such Fiscal Year.

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

“*Reimbursement Loan*” shall have the meaning assigned to such term in Section 2.4(d).

“*Reimbursement Loan Amortization Payment Amount*” means, with respect to a Reimbursement Loan, the principal amount of such Reimbursement Loan on the applicable Reimbursement Loan Start Date divided by the number of Reimbursement Loan Payment Dates in the applicable Reimbursement Loan Amortization Period.

“*Reimbursement Loan Amortization Period*” means, with respect to a Reimbursement Loan, the period commencing on the applicable Reimbursement Loan Start Date and ending on the applicable Reimbursement Loan Maturity Date.



“*Reimbursement Loan Maturity Date*” means, with respect to a Reimbursement Loan, the earlier of (i) the second anniversary of the applicable Reimbursement Loan Start Date and (ii) the Maturity Date.

“*Reimbursement Loan Payment Date*” means, with respect to a Reimbursement Loan, the first Business Day of each calendar quarter during the applicable Reimbursement Loan Amortization Period and the Reimbursement Loan Maturity Date.

“*Reimbursement Loan Start Date*” means, with respect to a Reimbursement Loan, the date such Reimbursement Loan is made.

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

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

“*Reserve Funds Notice*” has the meaning set forth in Section 5.1(r) hereof

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

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

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

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

“*Separate System*” has the meaning set forth in the Master Trust Indenture.

“*State*” means the State of California.

“*Statutory Reserve Rate*” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB Board to which the Bank is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “*Eurocurrency Liabilities*” in Regulation D of the FRB Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Bank under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

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

“*Suspension Event*” shall occur if (i) commencing with the fiscal quarter ended September 30, 2018, the Debt Service Coverage Ratio as set forth in any Debt Service Coverage Ratio Notice is less than 1.20 but greater than 1.05; or (ii) the Reserve Funds Notice for the fiscal quarter ended June 30, 2021, the Reserve Funds Notice for the fiscal quarter ended or June 30, 2022 and any subsequent Reserve Funds Notice indicates a deficit in either the Rate Stabilization Reserve or the Operating Reserve for the fiscal quarter included in such Reserve Funds Notice. A Suspension Event under clause (i) above shall remain in effect until such time as the Commission delivers to the Bank a Debt Service Coverage Ratio Notice that demonstrates that the Debt Service Coverage Ratio is equal to or greater than 1.20. A Suspension Event under clause (ii) above shall remain in effect until the Commission delivers to the Bank a Reserve Funds Notice that demonstrates that the Rate Stabilization Reserve and the Operating Reserve were both fully funded at the end of the fiscal quarter to which such Reserve Funds Notice applies.

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

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

“*Target Operating Reserve Requirement*” means (i) for the Fiscal Year ended June 30, 2021 an amount equal to 50% of the Operating Reserve Requirement for such Fiscal Year and (ii) for the Fiscal Year ended June 30, 2022 an amount equal to 85% of the Operating Reserve Requirement for such Fiscal Year, in each case as set forth in the Five Year Plan.

“*Target Rate Stabilization Reserve Requirement*” means (i) for the Fiscal Year ended June 30, 2021 an amount equal to 50% of the Rate Stabilization Reserve Requirement for such Fiscal

Year and (ii) for the Fiscal Year ended June 30, 2022 an amount equal to 85% of the Rate Stabilization Reserve requirement for such Fiscal Year, in each case as set forth in the Five Year Plan.

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

“*2017 Audited Financial Statements*” means the statements of net position of the CleanPowerSF Program at June 30, 2016 and June 30, 2017, the statements of revenues, expenses and changes in net position of the CleanPowerSF Program for the years ended June 30, 2016 and June 30, 2017, and the statements of cash flows of the CleanPowerSF Program for the years ended June 30, 2016 and June 30, 2017, together with unqualified audit opinion of KPMG LLP.

“*Type*”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“*Working Capital Loan*” means any Loan other than a Cash Collateral Loan or a Reimbursement Loan.

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

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

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

## ARTICLE 2

### THE CREDITS

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

#### Section 2.2 **Loans and Borrowings.**

(a) Subject to Section 2.4(d), Section 2.5(d) and Section 2.11, at the time of each Borrowing, the Commission may elect to incur a Loan as an ABR Loan or a Eurodollar Loan.

(b) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$25,000 and not less than \$100,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.4(d). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 Eurodollar Borrowings outstanding.

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

Section 2.3 **Requests for Revolving Borrowings.** To request a Borrowing, the Commission shall notify the Bank of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing; provided that any such notice of an ABR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.4(d) may be given not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Bank of a written Borrowing Request in a form approved by the Bank and signed by the Commission. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.2:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; and

(v) the location and number of the Commission’s account to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Commission shall be deemed to have selected an Interest Period of one month’s duration. Subject to satisfaction of the terms and conditions of Section 3.2, the Bank shall make available to, or for the account of, the Commission the amount of each Borrowing no later than 2:00 p.m., New York City time, on the applicable Borrowing date.

#### Section 2.4 **Letters of Credit.**

(a) **General.** Subject to the terms and conditions set forth herein, the Commission may request the issuance of Letters of Credit as the applicant thereof for the support of its PPA payment obligations, in a form reasonably acceptable to the Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Commission to, or entered into by the Commission with, the Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) **Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.** To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Commission shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Bank) to the Bank (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Bank, the Commission also shall submit a letter of credit application on the Bank’s standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Commission shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the Revolving Credit Exposure shall not exceed the Commitment. Notwithstanding the preceding requirements of this

Section 2.4(b), the Bank acknowledges that it has received all of the information it has requested in order to amend the Existing JPMorgan Letters of Credit on the Closing Date.

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

(d) Reimbursement. If the Bank shall make any LC Disbursement in respect of a Letter of Credit, the Commission shall reimburse such LC Disbursement by paying to the Bank an amount equal to such LC Disbursement not later than 1:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Commission shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Commission prior to such time on such date, then not later than 1:00 p.m., New York City time, on the Business Day immediately following the day that the Commission receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$100,000, the Commission may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Borrowing in an equivalent amount and, to the extent so financed, the Commission's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing (such ABR Borrowing, a "*Reimbursement Loan*").

(e) Obligations Absolute. The Commission's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Commission's obligations hereunder. Neither the Bank nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Bank; provided that the foregoing shall not be construed to excuse the Bank from liability to the Commission to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Commission to the extent permitted by applicable law) suffered by the Commission that are caused by the Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of the Bank (as finally determined by a court of competent jurisdiction), the Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in

substantial compliance with the terms of a Letter of Credit, the Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Bank shall promptly notify the Commission by telephone (confirmed by telecopy) of such demand for payment and whether the Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Commission of its obligation to reimburse the Bank with respect to any such LC Disbursement.

(g) Interim Interest. If the Bank shall make any LC Disbursement, then, unless the Commission shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum set forth in Section 2.10(d) for ABR Loans and such interest shall be due and payable on the date when such reimbursement is payable.

#### Section 2.5 Interest Elections.

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

(b) To make an election pursuant to this Section, the Commission shall notify the Bank of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Commission were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Bank of a written Interest Election Request in a form approved by the Bank and signed by the Commission.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:

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

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

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

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

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

(d) If the Commission fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Bank so notifies the Commission, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto; provided, however, that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Bank if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.1(e) or Section 6.1(f).

#### Section 2.6 **Termination and Reduction of Commitment.**

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

(b) The Commission may at any time terminate, or from time to time reduce, the Commitment; provided that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000 and (ii) the Commission shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.8, the Revolving Credit Exposures would exceed the Commitment.

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

(d) No later than ten (10) days after the publication of the Budget for a Fiscal Year, the Commission shall designate in writing delivered to the Bank the Clean Down Period for such



Fiscal Year. Notwithstanding anything to the contrary in this Agreement, prior to the earlier of (i) the termination of the Commitments and (ii) the Maturity Date, no Borrowings of Working Capital Loans may be made during any Clean Down Period and, on the first day of each Clean Down Period, the Commission shall prepay in full all Working Capital Loans outstanding on such day from proceeds other than amounts on deposit in the Rate Stabilization Reserve or the Operating Reserve.

**Section 2.7 Repayment of Loans; Evidence of Debt.**

(a) The Commission hereby unconditionally promises to pay to the Bank the then unpaid principal amount of each Loan (other than a Reimbursement Loan) on the Maturity Date. The Commission hereby unconditionally promises to pay to the Bank with respect to each Reimbursement Loan the Reimbursement Loan Amortization Payment Amount for such Reimbursement Loan on each applicable Reimbursement Loan Payment Date.

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

(c) The Bank may request that Loans made by it be evidenced by a promissory note. In such event, the Commission shall prepare, execute and deliver to the Bank a promissory note payable to the Bank and in a form approved by the Bank. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3) be represented by one or more promissory notes in such form.

**Section 2.8 Prepayment of Loans.**

(a) The Commission shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Commission shall notify the Bank by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.6, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.6. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10.

Section 2.9 **Fees**. The Commission agrees to pay to the Bank the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.10 **Interest**.

(a) The Loans comprising each ABR Borrowing (other than Reimbursement Loans) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) The Reimbursement Loans shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Commission hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate *per annum* equal to (i) in the case of overdue principal of any Loan, 3% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 3% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

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

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Bank, and such determination shall be conclusive absent manifest error.

(g) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Bank of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date.

Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Commission shall pay to the Bank a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.10(g) that has not previously been paid to the Bank in accordance with the immediately preceding sentence.

Section 2.11 **Alternate Rate of Interest.**

(a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Bank determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period, or (ii) the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to the Bank of making or maintaining its Loan included in such Borrowing for such Interest Period; then the Bank shall give notice thereof to the Commission by telephone or teletype as promptly as practicable thereafter and, until the Bank notifies the Commission that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (B) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(b) If at any time the Bank determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Bank has made a public statement identifying a specific date after which the LIBO Screen Rate shall no longer be used for determining interest rates for loans, then the Bank and the Commission shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.11(b), only to the extent the LIBO Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, or (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing; provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 2.12 **Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other

assessment) against assets of, deposits with or for the account of, or credit extended by, the Bank (except any such reserve requirement reflected in the Adjusted LIBO Rate);

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

(iii) subject the Bank to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

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

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

(c) A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Commission and shall be conclusive absent manifest error. The Commission shall pay the Bank, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Failure or delay on the part of the Bank to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's right to demand such compensation; provided that the Commission shall not be required to compensate the Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that the Bank notifies the Commission of the Change in Law giving rise to such increased costs or reductions and of the Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

**Section 2.13 Break Funding Payments.** In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of

whether such notice may be revoked under Section 2.8(b) and is revoked in accordance therewith), then, in any such event, the Commission shall compensate the Bank for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to the Bank shall be deemed to include an amount determined by the Bank to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Bank would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of the Bank setting forth any amount or amounts that the Bank is entitled to receive pursuant to this Section shall be delivered to the Commission and shall be conclusive absent manifest error. The Commission shall pay the Bank the amount shown as due on any such certificate within 30 days after receipt thereof.

Section 2.14 **Payments Free of Taxes.**

(a) Any and all payments by or on account of any obligation of the Commission under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Commission) requires the deduction or withholding of any Tax from any such payment by the Commission, then the Commission shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Commission shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.14) the Bank receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(c) As soon as practicable after any payment of Taxes by the Commission to a Governmental Authority pursuant to this Section 2.14, the Commission shall deliver to the Bank the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank.

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

(e) If the Bank determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Commission an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Commission, upon the request of the Bank, shall repay to the Bank the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank be required to pay any amount to the Commission pursuant to this paragraph (e) the payment of which would place the Bank in a less favorable net after-Tax position than the Bank would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Bank to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Commission or any other Person.

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

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

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

(a) The Commission shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Bank, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Bank at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.5 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

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

Section 2.16 **Mitigation Obligation.** If the Bank requests compensation under Section 2.12, or if the Commission is required to pay any Indemnified Taxes or additional amounts to the Bank or any Governmental Authority for the account of the Bank pursuant to Section 2.14,

then the Bank shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Bank, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Bank to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Bank. The Commission hereby agrees to pay all reasonable costs and expenses incurred by the Bank in connection with any such designation or assignment.

Section 2.17 **Extension of Commitment Period.** The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.17. Upon receipt of written request of the Commission to extend the Maturity Date, received not less than one hundred twenty (120) days prior to the then current Maturity Date, the Bank will use its commercially reasonable efforts to notify the Commission of its response within thirty (30) days of receipt of the request therefor (the Bank's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Bank and the Commission may agree); provided, however, that the failure of the Commission to receive a written confirmation from the Bank within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Bank and the Commission have entered into a written agreement confirming a change in any term of this Agreement.

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

### ARTICLE 3

#### CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Effectiveness.** The obligation of the Bank to make Loans and to issue Letters of Credit (including the amendments to the Existing JPMorgan Letters of Credit) hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* The Bank has received (i) an opinion of the City Attorney of the City dated the Closing Date and addressed to the Bank (or on which the Bank may rely) to the effect that (A) the Commission is duly organized and validly existing as a commission of the City pursuant to the Charter with full legal power and authority to execute and deliver the Basic Documents; (B) the Basic Documents executed by the Commission on or prior to the Closing Date are valid and binding agreements of the Commission enforceable against the Commission in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights, to general principles of equity and to limitations on remedies

against public agencies; (C) no authorization, approval, consent or order of any agency or body having jurisdiction over the Commission (including the California Public Utilities Commission and the California Independent System Operator) is required in connection with the CCA Program, the IP or the execution and delivery of the Basic Documents which has not been obtained; (D) the execution, delivery and performance of the Basic Documents do not conflict with any law or material agreements to which the Commission is a party or cause a default under any material documents to which the Commission is a party; and (E) no litigation is pending or, to the best knowledge of the City Attorney, threatened against the Commission threatening its existence or power, the CCA Program, the IP or the power and authority of the Commission to enter into and perform its obligations under the Basic Documents or in which a final adverse decision could materially adversely affect the business, operations or financial condition of the Commission, such opinion (or, in lieu thereof, a reliance letter) to be addressed to the Bank, dated the Closing Date and in form and substance satisfactory to the Bank; and (ii) an opinion of Orrick Herrington & Sutcliffe LLP, special counsel to the Commission, dated the Closing Date and addressed to the Bank in the form attached hereto as Exhibit B.

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

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

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Commission, threatened (i) in connection with the CCA Program, the IP or the Basic Documents or any transactions contemplated thereby or (ii) against or affecting the Commission, the result of which could have a material adverse effect on the business, operations or condition (financial or otherwise) of the Commission or its ability to perform its obligations under the Basic Documents.

(e) *No Material Adverse Change.* Since the date of the 2017 Audited Financial Statements, (i) no material adverse change has occurred in the status of the business, operations or condition (financial or otherwise) of the Commission or its ability to perform its obligations under the Basic Documents and (ii) no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Bank from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* The Bank has received (i) certified copies of all proceedings of the Commission authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Commission pursuant hereto or thereto, on which certification



the Bank may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees; Existing JPMorgan Obligations.* The Bank has received all fees and expenses due and payable to the Bank and/or its legal counsel pursuant to the Fee Agreement. All Existing JPMorgan Obligations shall have been paid in full in immediately available funds.

(h) *Financial Statements.* The Bank has received the 2017 Audited Financial Statements, internally prepared quarterly budget reports of the Commission for the most recent fiscal quarter end, if not previously provided.

(i) *[Reserved].*

(j) *Amended JPMorgan Letters of Credit.* Each beneficiary of an Existing JPMorgan Letter of Credit shall have accepted an amendment thereto in the form previously agreed to by such beneficiary, the Commission and the Bank.

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

The execution and delivery of this Agreement by the Bank signifies its satisfaction with the conditions precedent set forth in this Section 3.1.

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

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

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

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

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to issue the Letters of Credit, the Commission represents and warrants to the Bank as follows:

Section 4.1 **Organization, Powers, Etc.** The Commission (a) is a commission of the City and County of San Francisco organized and existing under the Charter; (b) has the full legal right, power and authority to (i) own and operate the CleanPowerSF Program and control its

properties and to carry on its business as now conducted and as contemplated to be conducted, including without limitation, by the CCA Program and the IP, (ii) execute, deliver and perform its obligations under the Basic Documents and (iii) provide for the security of this Agreement and the Fee Agreement pursuant to the Charter; and (c) has complied with all Laws in all matters related to such actions of the Commission as are contemplated by the CCA Program, the IP and the Basic Documents. The CleanPowerSF Program is a Separate System.

Section 4.2 **Authorization, Absence of Conflicts, Etc.** The adoption of the CCA Program, the implementation of the IP and the execution, delivery and performance by the Commission of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Commission, (b) do not conflict with, or result in a violation of, any Laws, including the Charter, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Commission which violation would result in a material adverse impact on the CleanPowerSF Program and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Commission is a party or by which the Commission or any of its property is bound which, in any case, would result in a material adverse impact on the CleanPowerSF Program.

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

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

Section 4.5 **Absence of Material Litigation.** There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Commission, threatened against or affecting the Commission questioning the validity of the Charter, the adoption of the CCA Program, the implementation of the IP or the execution, delivery and performance by the Commission of the Basic Documents or any proceeding taken or to be taken by the Commission or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the adoption of the CCA Program, the implementation of the IP or the execution, delivery and performance by the Commission of the Basic Documents, or which could reasonably be expected to result in any material adverse change in the financial condition, operations or prospects of the CleanPowerSF Program, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as "*Material Litigation*").

Section 4.6 **Financial Condition.** The most recent audited financial statements of the CleanPowerSF Program delivered (or deemed delivered) to the Bank (the "*Audited Financial*

*Statements*”) were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Bank. The most recent unaudited financial statements of the CleanPowerSF Program delivered (or deemed delivered) to the Bank were prepared on a consistent basis and, unless otherwise specified in Schedule 5.1(a), in accordance with GAAP. The data on which such financial statements and budget reports are based were true and correct in all material respects. The Audited Financial Statements and the budget reports present fairly the net position of the CleanPowerSF Program as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended. Since the date of the most recent Audited Financial Statements delivered to the Bank, no material adverse change has occurred in the business, operations or condition (financial or otherwise) of the CleanPowerSF Program.

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

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

Section 4.9 **No Default.**

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

(b) No “event of default” has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the CleanPowerSF Program to which the Commission is a party or which purports to be binding on the Commission or on any of the property of the CleanPowerSF Program.

Section 4.10 **No Proposed Legal Changes.** There is no amendment or, to the knowledge of the Commission, proposed amendment to the Constitution of the State, any State law or the Charter or any administrative interpretation of the Constitution of the State, any State law, or the Charter, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a material adverse effect on the CCA Program, the IP or the ability of the Commission to perform its obligations under the Basic Documents.

Section 4.11 **Compliance with Laws, Etc.** The Commission is in compliance with the Investment Policy and all Laws applicable to the Commission, non-compliance with which could reasonably be expected to have a material adverse effect on the security for the obligations under this Agreement and the Fee Agreement or the validity and enforceability of the Basic Documents. In addition, no benefit plan maintained by the Commission for its employees is subject to the provisions of ERISA, and the Commission is in compliance with all Laws in respect of each such benefit plan.

Section 4.12 **Environmental Matters.** In the ordinary course of its business, the Commission conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Commission does not believe that Environmental Laws are likely to have a material adverse effect on the ability of the Commission to perform its obligations under the Basic Documents.

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

Section 4.14 **Liens.** This Agreement creates a valid Lien on and pledge of the CleanPower SF Net Revenues to secure the payment and performance of the Commission's obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Commission, the Bank or any other Person to create or perfect such Lien. Except for the Lien over CleanPowerSF Revenues contained in this Agreement, Liens over CleanPowerSF Revenues securing Parity Debt, Subordinate Debt and Affiliate Loans permitted by this Agreement and the Lien over CleanPowerSF Excess Revenues securing the Existing Power Enterprise Loan, there is no pledge of or Lien on CleanPowerSF Revenues. There is no pledge of or Lien on CleanPowerSF Net Revenues that ranks senior to the obligations hereunder or under the Fee Letter.

Section 4.15 **Sovereign Immunity.** The Commission is not entitled to immunity from legal proceedings to enforce the Basic Documents (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Basic Documents.

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

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

Section 4.18 **ERISA**. The Commission does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19 **Sanctions Concerns and Anti-Corruption Laws**.

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

(b) The Commission and its respective officers and employees and to the knowledge of the Commission, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. The Commission has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar Anti-Corruption Laws in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

Section 4.20 **CleanPowerSF Program Debt**. The Commission has not incurred or issued any CleanPowerSF Program Debt other than the Existing Power Enterprise Loan and CleanPowerSF Program Debt, if any, incurred or issued in accordance with Section 5.2(j).

## ARTICLE 5

### COVENANTS

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

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

(i) as soon as practicable and, in any event, within one hundred eighty (180) days after the end of each Fiscal Year of the Commission, a statement of net position of the CleanPowerSF Program as at the end of such Fiscal Year and statements of revenues, expenses and changes in net position for the Fiscal Year then ended, all in reasonable detail (including notes thereto) and prepared in accordance with GAAP consistently applied, accompanied by (A) a report and opinion of the Commission's independent accountants (which will be of nationally recognized standing or an independent certified public accountant otherwise acceptable to the Bank), which report and opinion will have been prepared in accordance with generally accepted auditing standards and (B) a compliance certificate, substantially in the form of Exhibit C hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default,

the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default;

(ii) at the time the Commission delivers the financial statements pursuant to subsection (i) above, the independent public accountants' report on internal controls over financial reporting of the CleanPowerSF Program;

(iii) as soon as practicable and, in any event, within forty-five (45) days after the end of each the first three fiscal quarters of the Commission, the unaudited financial statements for the CleanPowerSF Program for the fiscal quarter then ended prepared on a consistent basis and, unless otherwise specified in Schedule 5.1(a), in accordance with GAAP;

(iv) as soon as practicable but, in any event, within ten (10) days after the issuance thereof, copies of any prospectus, official statement, offering circular, placement memorandum or similar document, and any supplements thereto and updates and amendments thereof (including any filings made pursuant to Rule 15c2-12 under the Securities Act of 1933, as amended), that the Commission makes available in connection with the offering for sale of any bonds or notes secured by CleanPowerSF Revenues of which it is the issuer and copies of any other financial reports or other written information distributed generally to holders of bonds or notes issued by the Commission;

(v) within ten (10) days after the publication thereof, a copy of the Commission's Adopted Budget for the CleanPowerSF Program for the next Fiscal Year and such additional period as may be covered by such Adopted Budget (each a "*Budget*"), which Budget shall include all obligations due under the Basic Documents for the next Fiscal Year and such additional period as may be covered by such Budget;

(vi) as soon as practicable and, in any event, within fifteen (15) days after the end of each calendar month, a monthly Customer activity report, which shall include amount of Customers by type, active accounts by Customer type at the beginning of such month, active accounts by Customer type at the end of such month, net change in active accounts for such month by Customer type, opt ins for such month by Customer type and vacancy figures for such month; and

(vii) with reasonable promptness, such other data regarding the financial position or business of the CleanPowerSF Program or its property as the Bank may reasonably request from time to time.

As and to the extent that any financial statement, audit report or other filing described in this Section 5.1(a) (x) has been filed electronically in accordance with the terms thereof with any nationally recognized municipal securities information repository and with the Municipal Securities Rulemaking Board, or posted to the Commission's website, as applicable, and (y) is available without charge or other restriction, the requirements of Section 5.1(a) hereof with respect thereto will be deemed satisfied.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Commission shall permit the Bank or any of its agents or

representatives to visit and inspect any of the properties of the Commission and the other assets of the Commission, to examine the books of account of the Commission (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Commission with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Bank may reasonably request.

(c) *Compliance with Documents and Other Revenue Documents; Operation and Maintenance of CleanPowerSF Program.*

(i) The Commission shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing obligations of the Commission secured by CleanPowerSF Revenues and owing to a bank, investment bank, broker dealer or other similar financial institution or any affiliate thereof (the foregoing documents (exclusive of the Basic Documents) being referred to herein as “*Other Revenue Documents*”). By the terms of this Agreement, the Bank is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement) and in each Other Revenue Document, and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, the Commission will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents or any Other Revenue Document in any manner without the prior written consent of the Bank, and the Commission shall take, or cause to be taken, all such actions as may be reasonably requested by the Bank to strictly enforce the obligations of the other parties to any of the Basic Documents and any Other Revenue Documents, as well as each of the covenants set forth therein. The Commission shall give prior written notice to the Bank of any action referred to in this subparagraph (i).

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

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

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

(f) *Investment Policy and Guidelines.* The Commission shall promptly notify the Bank in writing, not less than thirty (30) days after the Commission receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase the types of investments permitted thereby as of the Closing Date.

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

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

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

(j) *Notices.* The Commission shall promptly furnish, or cause to be furnished, to the Bank (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement) or any Other Revenue Document, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other CleanPowerSF Program Debt which are not restricted or prohibited from being shared with the Bank under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed substitution of any Letter of Credit, (iv) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which the Commission has knowledge, which could reasonably be expected to have a material adverse effect on the Commission’s ability to perform its obligations under the Basic Documents or to result in a material adverse effect on the enforceability or validity of any Basic Document.



(k) *Maintenance of Insurance.* The Commission shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; provided, however, that the Commission may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker's compensation and vehicle liability and, with the consent of the Bank, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers' compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Commission. The Commission shall, upon request of the Bank, furnish evidence of such insurance to the Bank. The Commission shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any CleanPowerSF Revenues or funds of the CleanPowerSF Program, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such CleanPowerSF Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the CleanPowerSF Program.

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

(m) *Rates.* The Commission shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the CleanPowerSF Program, which shall be fair and nondiscriminatory and adequate to provide the Commission on a projected basis with CleanPowerSF Revenues in each Fiscal Year sufficient to (i) pay, to the extent not paid from other available moneys, any and all amounts the Commission is obligated to pay or set aside from CleanPowerSF Revenues by law or contract in such Fiscal Year and (ii) maintain on a projected basis a Debt Service Coverage Ratio of not less than 1.10 for each Fiscal Year.

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

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

(p) *Notice of Rating and Rating Change.* The Commission shall use its best efforts to notify the Bank as soon as practicable of any issuance, downgrade, suspension or withdrawal in rating of any CleanPowerSF Program Debt.

(q) *Debt Service Coverage.* The Commission shall maintain a Debt Service Coverage Ratio of not less than 1.05 for each fiscal quarter of the Commission, commencing with the fiscal quarter ended September 30, 2018. The Debt Service Coverage Ratio shall be tested as of the last day of each fiscal quarter commencing with the fiscal quarter ended June 30, 2018. The Commission shall determine the Debt Service Coverage Ratio for a fiscal quarter and provide written notice thereof together with supporting calculations in reasonable detail to the Bank as soon as practicable following the end of a fiscal quarter and in any event no later than the forty five calendar days following the end of such fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

(r) *Reserves.* The Commission shall apply not less than 80% (or, if an Event of Default or a Suspension Event has occurred and is continuing, 100%) of Excess Revenues, if any, in each Fiscal Year to the Rate Stabilization Reserve and the Operating Reserve until such time, if any, as the balance of the Rate Stabilization Reserve equals or exceeds the Target Rate Stabilization Reserve Requirement and the balance of the Operating Reserve equals or exceeds the Target Operating Reserve Requirement, respectively, for such Fiscal Year as set forth in the Five Year Plan. In the event the Commission withdraws funds from the Rate Stabilization Reserve or the Operating Reserve in any Fiscal Year after the Target Rate Stabilization Reserve Requirement and the Target Operating Reserve Requirement, respectively, have been satisfied, then the Commission shall once again apply not less than 80% (or, if an Event of Default or a Suspension Event has occurred and is continuing, 100%) of Excess Revenues, if any, to the Rate Stabilization Reserve and the Operating Reserve until such time, if any, as the balance of the Rate Stabilization Reserve equals or exceeds the Target Rate Stabilization Reserve Requirement and the balance of the Operating Reserve equals or exceeds Target Operating Reserve Requirement, respectively for such Fiscal Year as set forth in the Five Year Plan. No later than forty five calendar days following the end of each fiscal quarter of the Commission, the Commission shall deliver to the Bank a written certificate of an Authorized Representative (each, a “*Reserve Funds Notice*”) setting forth: (i) the then current Rate Stabilization Reserve Requirement and Operating Reserve Requirement, (ii) the beginning and estimated end balances of the Rate Stabilization Reserve and Operating Reserve for the Fiscal Year that includes such fiscal quarter and (iii) the amount, date and purpose of each withdrawal from the Rate Stabilization Reserve or the Operating Reserve for such fiscal quarter. The Commission shall withdraw amounts from the Operating Reserve and/or the Rate Stabilization Reserve to pay CleanPowerSF Operating and Maintenance Costs, Obligations and debt service on, and fees associated with, other Parity Debt.

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

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Commission to pay when due amounts owing to the Bank or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Revenues or the priority of payments from Revenues; or (iii) the rights or remedies of the Bank under the Basic Documents.

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

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

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a body politic and corporate and a political subdivision of the State or its rights and privileges as such entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the CleanPowerSF Revenues other than the Liens created or permitted by this Agreement and Liens created or permitted by any other agreement or instrument evidencing Parity Debt or Subordinate Debt.

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

(g) *CleanPowerSF Program.* Construct, operate or maintain, and shall not within the scope of its powers permit any other public or private corporation, political subdivision, district or agency or any Person whatsoever to construct, operate or maintain, within the City or any part thereof, any system or utility competitive with the CleanPowerSF Program. The Commission shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the CleanPowerSF Program to pay the fees, rates and charges applicable to the services and facilities furnished by the CleanPowerSF Program. The Commission shall not provide any service of the CleanPowerSF Program free of charge to any Person, except (i) for free use by the City and its agencies, (ii) to the extent that any such free use is required by the terms of any existing contract or agreement and (iii) for incidental insignificant free use so long as such free use does not prevent the Commission from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the CleanPowerSF Program with any other entity or enterprise, unless and until the Commission has provided a method for segregating the CleanPowerSF Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the CleanPowerSF Revenues for the payment of the Obligations and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of CleanPowerSF Revenues set forth in this Agreement to be no longer valid. If the Commission does effect such a merger, the Commission shall provide written notice thereof to the Bank and shall deliver a copy of the aforementioned opinion to the Bank.

(i) *Use of Proceeds.* Use the Letters of Credit for any purpose other than to secure the Commission's obligations under PPAs. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure the Commission's obligations under PPAs, (ii) to repay in whole or in part any LC Disbursement or (iii) for general corporate purposes. For the avoidance of doubt,

Loan Proceeds may not be used for capital expenditures or other long-term expenditures or for funding the Rate Stabilization Reserve or the Operating Reserve.

(j) *CleanPowerSF Program Debt.*

(i) Not issue, incur or assume to exist any Senior Debt or any other Debt other than (A) Parity Debt described in clause (ii) below; and (B) Subordinate Debt described in clause (iii) below;

(ii) Not issue, incur or assume to exist any Parity Debt except for: (A) the Obligations, and (B) Debt issued or incurred in compliance with the following conditions:

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

(2) such Parity Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Charter, the Ordinances or any other resolutions or ordinances adopted by the City or the Commission;

(3) the Rate Stabilization Fund and the Operating Fund are fully funded immediately prior to the issuance or incurrence of such Parity Debt; and

(4) a written certificate of the Commission: (A) setting forth CleanPowerSF Net Revenues for the preceding twelve month period and estimated CleanPowerSF Net Revenues (in reasonable detail and with reasonable assumptions) for each of the next three Fiscal Years, (B) setting forth Annual Debt Service for the preceding twelve month period and estimated Annual Debt Service (in reasonable detail and with reasonable assumptions) for each of the next three Fiscal Years and (C) demonstrating that the either (I) CleanPowerSF Net Revenues (together with any fund balances of the Commission which were available for the payment of Annual Debt Service in excess of the Operating Reserve Requirement and the Rate Stabilization Reserve Requirement) for the preceding twelve month period was at least equal to 1.20 times the Annual Debt Service for the preceding twelve month period or (II) estimated CleanPowerSF Net Revenues (together with any fund balances of the Commission which were available for the payment of Annual Debt Service in excess of the Operating Reserve Requirement and the Rate Stabilization Reserve Requirement) in each of the next three Fiscal Years is at least equal to 1.20 times the Annual Debt Service for such respective Fiscal Years; and

(iii) Not issue, incur or assume to exist any Subordinate Debt except for: (A) Affiliate Loans and (B) Debt issued or incurred in compliance with the following conditions:

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

(2) such Subordinate Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Charter, the Ordinances or any other resolutions or ordinances adopted by the City or the Commission;

(3) the Rate Stabilization Fund and the Operating Fund are fully funded immediately prior to the issuance or incurrence of such Subordinate Debt or will be fully funded after the issuance or incurrence of such Subordinate Debt and the application of the proceeds thereof; and

(4) a written certificate of the Commission: (A) setting forth CleanPowerSF Net Revenues for the preceding twelve month period and estimated CleanPowerSF Net Revenues (in reasonable detail and with reasonable assumptions) for each of the next three Fiscal Years, (B) setting forth Debt Service for the preceding twelve month period and estimated Annual (in reasonable detail and with reasonable assumptions) for each of the next three Fiscal Years and (C) demonstrating that the either (I) CleanPowerSF Net Revenues (together with any fund balances of the Commission which were available for the payment of Debt Service but excluding any reserve funds) for the preceding twelve month period was at least equal to 1.20 times the Debt Service the preceding twelve month period or (II) estimated CleanPowerSF Net Revenues (together with any fund balances of the Commission which are available for the payment of Annual Debt Service but excluding any reserve funds) in each of the next three Fiscal Years is at least equal to 1.0 times the Annual Debt Service for such respective Fiscal Years.

(k) *Excess Revenues.* Not use Excess Revenues for any purpose other than: (i) payment of CleanPowerSF Operating and Maintenance Costs; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, other Parity Debt; (iv) funding and replenishment of the Rate Stabilization Reserve and the Operating Reserve; (v) so long as no Event of Default has occurred and is continuing, payment of the principal of and interest on Affiliate Loans; (vi) so long as no Event of Default has occurred and is continuing, payment of interest on, and fees associated with, other Subordinate Debt; (vii) capital expenditures in connection with assets that will become part of the CleanPowerSF Program; (viii) rebates to CleanPowerSF Program customers; and (ix) any other lawful purpose that inures to the direct benefit of the CleanPowerSF Program. For the avoidance of doubt, payments of Excess Revenues to the City or any other enterprise fund of the City shall not be permitted under this Section 5.2(k) unless such payment is a repayment of an Affiliate Loan.

(l) *Subordination of Existing Power Enterprise Loan.* The Commission will treat the Existing Power Enterprise Loan as an obligation of the CleanPowerSF Program subordinate to all Obligations and Parity Debt, and the Commission will make no transfer to the Hetch Hetchy Power Enterprise Fund for the payment of the principal of and interest on the Existing Power Enterprise Loan except from Excess Revenues available after satisfaction of the requirements of Section 5.1(r).

## ARTICLE 6

### DEFAULTS

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

(a) the Commission fails to pay, or cause to be paid, as and when due, (i) any Reimbursement Obligation or (ii) any Obligation (other than a Reimbursement Obligation)

hereunder or under the Fee Agreement and, in such case, such failure continues for three (3) Business Days;

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

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

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

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

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

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

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

respect to any provision of this Agreement, the Charter, any other Basic Document or any operative document related to CleanPowerSF Program Debt;

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

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

(k) [reserved];

(l) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$10,000,000 are entered or filed against the Commission or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days;

(m) if any Rating Agency that is rating CleanPowerSF Program Debt (i) downgrades its long-term unenhanced rating of such Debt by two or more levels (including numeric and other qualifiers) or (ii) suspends or withdraws its rating of such Debt;

(n) (i) the Commission fails to cause the balance of the Rate Stabilization Reserve to equal or exceed the Target Rate Stabilization Reserve Requirement on or before the Fiscal Year ended June 30, 2021 or June 30, 2022, as applicable, and (ii) the Commission fails to cause the balance of the Rate Stabilization Reserve to equal or exceed the Target Rate Stabilization Reserve Requirement on or before the fiscal quarter ended December 31, 2021 or December 31, 2022, respectively;

(o) (i) the Commission fails to cause the balance of the Operating Reserve to equal or exceed the Target Operating Reserve Requirement on or before the Fiscal Year ended June 30, 2021 or June 30, 2022, as applicable, and (ii) the Commission fails to cause the balance of the Operating Reserve to equal or exceed the Target Operating Reserve Requirement on or before the fiscal quarter ended December 31, 2021 or December 31, 2022, respectively;

(p) the passage of any Law has occurred which could reasonably be expected to (i) have a material adverse financial impact on the ability of community choice aggregators to operate within the State, (ii) have a material adverse effect on the Commission's ability to perform its obligations under this Agreement or the other Basic Documents or (iii) result in a material adverse effect on the enforceability or validity of this Agreement or any of the other Basic Documents.

Section 6.2 **Remedies.** Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f)), and at any time thereafter during the continuance of such event, the Bank may by notice to the Commission, take either or both of the

following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Commission accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Commission; and in case of any Event of Default described in Section 6.1(e) or 6.1(f), the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Commission accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Commission.

Section 6.3 **Five Year Plan**. Each of the Commission and the Bank acknowledges that the Five Year Plan attached as Exhibit A assumes the phased customer expansion of the CleanPowerSF Program on certain launch dates, including phase III of customer expansion that is scheduled to launch on or before July 1, 2019 and ramp up over a three-year period ending on June 30, 2022. If for any reason after January 1, 2019 but not later than May 31, 2019, the Commission believes that the anticipated Phase III launch date will not occur on or prior to July 1, 2019 and/or the ramp up will extend beyond three years, the Commission shall provide the Bank with written notice thereof (with delivery confirmed) explaining the reasons why the launch date and/or ramp up schedule will not be met, the revised Phase III launch date and/or ramp up schedule and the impact that the delayed launch date and/or ramp up schedule will have on the Five Year Plan (the “*Delay Notice and Revised Plan*”). If the Delay Notice and Revised Plan includes proposed changes to the Target Operating Reserve Requirement and/or Target Rate Stabilization Reserve Requirement for any of the Fiscal Years ended June 30, 2020, 2021 and 2022 (such reserve requirements, each a “*Reserve Requirement*,” and such proposed changes, each a “*Proposed Adjusted Reserve Requirement*”) and the Bank desires to discuss the proposed changes with the Commission, the Bank will promptly notify the Commission in writing of such desire (a “*Meet and Confer Notice*”) and will meet with the Commission within 30 days of sending the Meet and Confer Notice to discuss the Delay Notice and Revised Plan and the Proposed Adjusted Reserve Requirements and negotiate in good faith with a view toward reaching mutually agreeable revised Reserve Requirements. If the Bank fails to send a Meet and Confer Notice within thirty (30) days of its receipt of a Delay Notice and Revised Plan, the Five Year Plan shall be automatically amended by substituting each Proposed Adjusted Reserve Requirement for the applicable Reserve Requirement and the defined term “*Five Year Plan*” shall include mean the Five Year Plan as so modified. If the Bank sends a Meet and Confer Notice within thirty (30) days of its receipt of a Delay Notice and Revised Plan and the Bank and the Commission meet, confer and mutually agree on revised Reserve Requirements, the Five Year Plan shall be amended by substituting each revised Reserve Requirement for the applicable Reserve Requirement and the defined term “*Five Year Plan*” shall include mean the Five Year Plan as so modified.

## ARTICLE 7

### MISCELLANEOUS

Section 7.1 **Amendments, Waivers, Etc.** No amendment or waiver of any provision of this Agreement, or consent to any departure by the Commission therefrom, will in any event be



effective unless the same is in writing and signed by the Bank and an Authorized Representative of the Commission, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2 **Notices**. All notices and other communications provided for hereunder must be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

- (a) if to the Commission:

City and County of San Francisco  
Public Utilities Commission  
Attention: Chief Financial Officer  
525 Golden Gate Avenue, 13th Floor  
San Francisco, California 94102  
Telephone: (415) 554-3155  
Facsimile: (415) 554-3161

(b) if to the Bank:

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 8th Floor  
New York, New York 10179  
Mail Code: NY1-M076  
Attention: Heather Talbott or  
Telephone No.: (212) 270-4875 or  
Facsimile No.: (917) 849-0272  
Email: [Heather.x.talbott@jpmorgan.com](mailto:Heather.x.talbott@jpmorgan.com)  
Allyson Goetschius  
Telephone No.: (212) 270-0335  
Facsimile No.: (917) 849-0272  
Email: [Allyson.l.goetschius@jpmorgan.com](mailto:Allyson.l.goetschius@jpmorgan.com)

with a copy to:

JPMorgan Chase Bank, National Association  
JPM-Delaware Loan Operations  
500 Stanton Christiana Road, NCC5, Floor 01  
Newark, Delaware 19713  
Attention: George Ionas  
Telephone: (302) 634-1651  
Telecopy: (302) 634-4733

And, for compliance-related items, with a copy to:  
[public.finance.notices@jpmchase.com](mailto:public.finance.notices@jpmchase.com)

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

**Section 7.3 Survival of Covenants; Successors and Assigns.**

(a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and LC Disbursement or the issuance of any Letter of Credit and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Commission which are contained in this Agreement will inure to the benefit of the successors and assigns of the Bank. The Commission may not transfer its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Letter with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Commission (which consent may not be withheld unreasonably), provided that the Bank shall be

responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Commission and the Bank, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Bank will be permitted to grant to one or more financial institutions (each a “Participant”) a participation or participations in all or any part of the Bank’s rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a “Participation”) without the consent of the Commission. In the event of any such grant by the Bank of a Participation to a Participant, the Bank shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Commission may continue to deal solely and directly with the Bank in connection with the Bank’s rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Commission agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Bank; provided that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and provided, further, that the Commission’s liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Commission would owe to the Bank but for such participation.

Section 7.4     **Reserved.**

Section 7.5     **Liability of Bank; Indemnification.**

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

(b) To the extent permitted by the law of the State, the Commission indemnifies and holds harmless the Bank from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys’ fees) which the Bank may incur (or which may be claimed against the Bank by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; provided that the

Commission is not required to indemnify the Bank to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Bank's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Bank is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Commission, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Commission shall not assert, and waives, any claim against the Bank, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Letter of Credit, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

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

Section 7.6 **Expenses**. Upon receipt of a written invoice, the Commission shall promptly pay (i) the reasonable fees and expenses of counsel to the Bank incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Bank incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents (provided that such expenses to be paid in connection with the preparation and execution and delivery will not exceed the amount specified in the Fee Agreement), (iii) the fees and disbursements of counsel to the Bank with respect to advising the Bank as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Bank. In addition, and notwithstanding the foregoing, the Commission agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the Commission hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Commission under this Section 7.6 will survive the termination of this Agreement.

Section 7.7 **No Waiver; Conflict**. Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between the Commission and the Bank.

Section 7.8 **Modification, Amendment, Waiver, Etc.** No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9 **Dealings.** The Bank and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Commission and/or any PPA Counterparty regardless of the capacity of the Bank hereunder or under any Letter of Credit.

Section 7.10 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which constitutes an original, but when taken together constitute but one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Bank to accept electronic signatures in any form or format without its prior written consent.

Section 7.12 **Table of Contents; Headings.** The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13 **Entire Agreement.** This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14 **Governing Law Waiver of Jury Trial.**

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK

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

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.15 **Governmental Regulations.** The Commission shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Commission is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“*OFAC*”), the Department of the Treasury or included in any Executive Order that prohibits or limits the Bank from making any advance or extension of credit to the Commission or from otherwise conducting business with the Commission and (b) ensure that the proceeds of LC Disbursements under the Letters of Credit are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Commission shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

Section 7.16 **USA PATRIOT Act.** The Bank notifies the Commission that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Act*”), it is required to obtain, verify and record information that identifies the Commission, which information includes the name and address of the Commission and other information that will allow the Bank to identify the Commission in accordance with the Act. The Commission agrees to provide such documentary and other evidence of the Commission’s identity as may be requested by the Bank at any time to enable the Bank to verify the Commission’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.17 **Electronic Transmissions.** The Bank is authorized to accept and process any amendments, transfers, assignments of proceeds, LC Disbursements, consents, waivers and all documents relating to the Letters of Credit which are sent to Bank by electronic transmission, including SWIFT, electronic mail, telex, telecopy, courier, mail or other computer generated telecommunications and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Commission. The Bank may, but shall not be obligated to, require authentication of such electronic transmission or that the Bank receives original documents prior to acting on such electronic transmission.

Section 7.18 **Assignment to Federal Reserve Bank.** The Bank may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Commission to the Bank in accordance with the terms of this Agreement will satisfy the Commission's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Bank from its obligations hereunder.

Section 7.19 **City Requirements.** The Bank agrees to the City's contracting requirements, as provided in Exhibit D attached hereto.

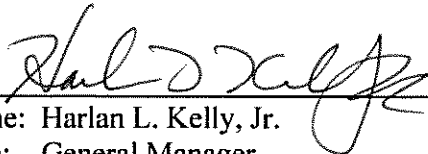
Section 7.20 **Arm's Length Transaction.** The transaction described in this Agreement is an arm's length, commercial transaction between the Commission and the Bank in which: (i) the Bank is acting solely as a principal (i.e., as a lender) and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to the Commission; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Commission with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank or any of its affiliates has provided other services or is currently providing other services to the Commission on other matters); (iv) the only obligations the Bank has to the Commission with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) the Bank is not recommending that the Commission take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Commission should discuss the information contained herein with the Commission's own legal, accounting, tax, financial and other advisors, as the Commission deems appropriate.

Section 7.21 **Extinguishment of Existing JPMorgan Debt Documents.** Upon issuance and delivery of the amendments to the Existing JPMorgan Letters of Credit and receipt by JPMorgan Chase Bank, National Association of payment of all Existing JPMorgan Obligations, as contemplated by Section 3.1(g) hereof, all obligations of the Commission and JPMorgan Chase Bank, National Association under the Existing JPMorgan Debt Documents, other than those which by their terms expressly survive the termination of the Existing JPMorgan Debt Documents (or any of them), shall be discharged and satisfied. For the avoidance of doubt, the Existing JPMorgan Letters of Credit will not be terminated, but will be amended and, upon effectiveness of the amendment, will become Letters of Credit under this Agreement.

[Signature Pages Follow]

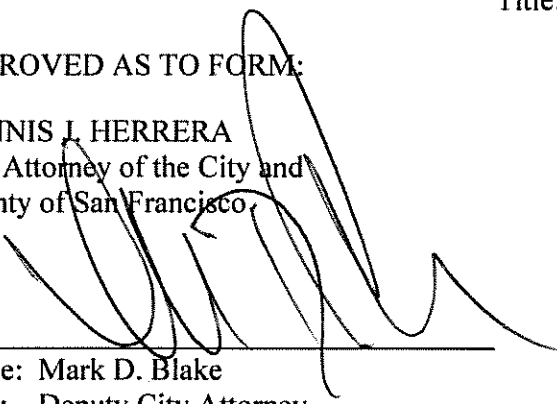
IN WITNESS WHEREOF, the Commission and the Bank have duly executed this Agreement as of the date first written above.

PUBLIC UTILITIES COMMISSION OF THE  
CITY AND COUNTY OF SAN FRANCISCO

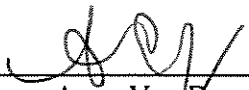
By:   
Name: Harlan L. Kelly, Jr.  
Title: General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney of the City and  
County of San Francisco

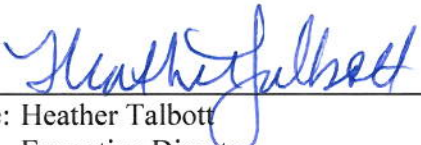
By:   
Name: Mark D. Blake  
Title: Deputy City Attorney

ACKNOWLEDGED:

  
Name: Anna Van Degna  
Title: Director of Public Finance of the City  
and County of San Francisco



JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

By:   
Name: Heather Talbott  
Title: Executive Director

Signature Page to Credit Agreement  
CleanPowerSF

**SCHEDULE 5.1(a)**

**Comparison of CleanPowerSF Audited versus Monthly/Quarterly Financial Statements**

	<b>Year-end audited financial statements</b>	<b>Monthly/Quarterly unaudited financial statements</b>
<b>Statement of Net Position (Balance Sheet)</b>	<p align="center"><b>Other Post-Employment Benefits (OPEB) and Accrued Vacation &amp; Sick Leave, non-current and Current Portion, and unrealized investment gain and loss, etc. are calculated and posted to the financial system at year end.</b></p>	<p align="center"><b>OPEB and accrued vacation and unrealized investment gain and loss, etc. are not calculated, therefore amounts remain unchanged through the fiscal year.</b></p>
<b>Statement of Revenues, Expenses and Changes in Net Position (Income Statement)</b>	<p align="center"><b>All revenue and expense items are accrued including unbilled revenues and expense accrual.</b></p>	<p align="center"><b>All revenue and expense items reflect invoices billed and vouchers received excluding unbilled revenues and expense accrual.</b></p>

<b>Statement of Cash Flows</b>	<b>Differences are based on entries in Statement of Net Position and Statement of Revenues, Expenses and Changes in Net Position.</b>
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Exhibit A  
CleanPowerSF Five Year Plan

SFPUC Fiscal Year	<u>EY2018</u>	<u>EY2019</u>	<u>EY2020</u>	<u>EY2021</u>	<u>EY2022</u>
CleanPowerSF Revenues	38,233,197	156,162,913	202,531,396	247,424,168	257,928,847
<b>CleanPowerSF Operating and Maintenance Costs</b>					
Total Cost of Energy	27,754,962	110,846,961	155,151,809	196,617,784	212,563,399
Operating Expenses	7,944,325	20,502,538	24,564,020	25,171,816	25,786,353
<b>Total</b>	<b>35,699,287</b>	<b>131,349,498</b>	<b>179,715,829</b>	<b>221,789,600</b>	<b>238,349,752</b>
CleanPowerSF Net Revenues	2,533,910	24,813,415	22,815,567	25,634,569	19,579,095
<b>Operating Reserve Requirement at Year End</b>					
Operating Reserve Requirement Inputs	29,571,287	114,539,737	162,800,478	204,366,789	220,404,257
Days for Requirement	90	90	90	90	90
Days in Fiscal Year	365	365	365	365	365
<b>Total</b>	<b>7,291,550</b>	<b>28,242,675</b>	<b>40,142,584</b>	<b>50,391,811</b>	<b>54,346,255</b>
Target Operating Reserve Requirement				25,195,905	46,194,317
<b>Rate Stabilization Reserve Requirement at Year End</b>					
CleanPowerSF Revenues	38,233,197	156,162,913	202,531,396	247,424,168	257,928,847
Percentage	15%	15%	15%	15%	15%
<b>Total</b>	<b>5,734,980</b>	<b>23,424,437</b>	<b>30,379,709</b>	<b>37,113,625</b>	<b>38,689,327</b>
Target Rate Stabilization Reserve Requirement				18,556,813	32,885,928

## EXHIBIT B

### FORM OF OPINION OF ORRICK, HERRINGTON & SUTCLIFFE LLP

March 29, 2018

JPMorgan Chase Bank, N.A.  
New York, New York

Re: Credit Agreement, dated as of March 29, 2018, between  
Public Utilities Commission of the City and County of San Francisco  
and JPMorgan Chase Bank, N.A.

Ladies and Gentlemen:

This letter is addressed to JPMorgan Chase Bank, N.A. (the “Bank”), pursuant to Section 3.1(a)(ii) of the Credit Agreement, dated as of March 29, 2018 (the “*Credit Agreement*”), between the Bank and the Public Utilities Commission of the City and County of San Francisco (the “*Commission*”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

In such connection, we have reviewed the Master Trust Indenture, the Credit Agreement, the Fee Agreement, certificates of the Commission and others, opinions of your counsel and of counsel to the Commission and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Commission. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Credit Agreement and the Fee Agreement. We call attention to the fact that the rights and obligations under the Credit Agreement and the Fee Agreement and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities and counties in the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off,

arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Credit Agreement or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets.

Based on and subject to the foregoing and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Credit Agreement and the Fee Agreement constitute valid and binding obligations of the Commission.
2. The Credit Agreement creates a valid pledge, to secure the payment of the Obligations, of the CleanPowerSF Net Revenues.
3. The CleanPowerSF Program constitutes a “Separate System” as defined in the Master Trust Indenture.

This letter is furnished by us as bond counsel to the Commission. No attorney-client relationship has existed or exists between our firm and the Bank in connection with the Credit Agreement or the Fee Agreement by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you as the Bank, is solely for the benefit of the Bank and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by any party to whom it is not specifically addressed.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

**EXHIBIT C**

**FORM OF COMPLIANCE CERTIFICATE**

This Compliance Certificate (this “*Certificate*”) is furnished to JPMorgan Chase Bank, National Association (the “*Bank*”) pursuant to the Credit Agreement, dated as of March 29, 2018 (the “*Agreement*”), between the Public Utilities Commission of the City and County of San Francisco (the “*Commission*”) and Bank. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

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

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

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*[Remainder of page intentionally left blank.]*



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

PUBLIC UTILITIES COMMISSION OF  
THE CITY AND COUNTY OF SAN  
FRANCISCO

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

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

Title: \_\_\_\_\_

## EXHIBIT D

### CITY REQUIREMENTS

(a) *Tropical Hardwood and Virgin Redwood Ban.* The City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

(b) *Nondiscrimination: Penalties.*

(i) *Bank Shall Not Discriminate.* In the performance of this Agreement, the Bank agrees not to discriminate against any employee, City and County employee working with the Bank or subcontractor, applicant for employment with the Bank or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(ii) *Subcontracts.* The Bank shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. The Bank's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(iii) *Non-Discrimination in Benefits.* The Bank does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(iv) *HRC Form.* The Bank shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(v) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein.

The Bank shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the San Francisco Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Bank understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Bank and/or deducted from any payments due the Bank; *provided, however*, that such damages shall not be set off against the payment of rental or other contract related to Commercial Paper Notes or other debt obligations of the City.

(c) *Limitations on Contributions.* Through execution of this Agreement, the Bank acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, including the Commission, for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (A) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (B) a candidate for the office held by such individual, or (C) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Bank acknowledges that the foregoing restriction applies only if the contract or combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Bank further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Bank's board of directors; the Bank's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Bank; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Bank. Additionally, the Bank acknowledges that the Bank must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 of the City's Campaign and Governmental Conduct Code.

(d) *MacBride Principles Northern Ireland.* Pursuant to San Francisco Administrative Code Section 12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of the Bank acknowledges and agrees that he or she has read and understood this section.

(e) *Conflict of Interest.* Through its execution of this Agreement, the Bank hereby acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that

it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

(f) *Earned Income Credit (“EIC”) Forms.* San Francisco Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(i) The Bank shall provide EIC Forms to each Eligible Employee at each of the following times: (A) within thirty days following the date on which this Agreement becomes effective (unless the Bank has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (B) promptly after any Eligible Employee is hired by the Bank; and (C) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(ii) Failure to comply with any requirement contained in the immediately preceding paragraph shall constitute a material breach by the Bank of the terms of this Agreement. If, within thirty days after the Bank receives written notice of such a breach, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Bank fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(iii) Any subcontract entered into by the Bank shall require the subcontractor to comply, as to the subcontractor’s Eligible Employees, with each of the terms of this Section.

(iv) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

(g) *Local Business Enterprise Utilization; Liquidated Damages.*

(i) *The LBE Ordinance.* The Bank shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase the Bank’s obligations or liabilities, or materially diminish the Bank’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. The Bank’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Bank’s obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, the Bank shall comply fully with all

other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(ii) *Compliance and Enforcement.* If the Bank willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, the Bank shall be liable for liquidated damages in an amount equal to the Bank's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against the Bank authorized in the LBE Ordinance, including declaring the Bank to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Bank's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to the San Francisco Administrative Code Section 14B.17.

By entering into this Agreement, the Bank acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. The Bank further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to the Bank on any contract with City.

The Bank agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(h) *Drug-Free Workplace Policy.* The Bank acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Commission or City premises. The Bank agrees that any violation of this prohibition by the Bank, its employees, agents or assigns will be deemed a material breach of this Agreement.

(i) *Compliance with Americans with Disabilities Act.* The Bank acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Bank shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Bank agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Bank, its employees, agents or assigns will constitute a material breach of this Agreement.

(j) *Sunshine Ordinance.* In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the Commission or the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary

financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

(k) *Requiring Minimum Compensation for Covered Employees.*

(i) The Bank agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (“MCO”), as set forth in San Francisco Administrative Code Chapter 12P (“Chapter 12P”), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the Bank’s obligations under the MCO is set forth in this Section. The Bank is required to comply with all the provisions of the MCO, irrespective of this listing of obligations in this Section.

(ii) The MCO requires the Bank to pay the Bank’s employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and the Bank is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Bank shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is the Bank’s obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against the Bank.

(iii) The Bank shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(iv) The Bank shall maintain employee and payroll records as required by the MCO. If the Bank fails to do so, it shall be presumed that the Bank paid no more than the minimum wage required under State law.

(v) The City is authorized to inspect the Bank’s job sites and conduct interviews with employees and conduct audits of the Bank.

(vi) The Bank’s commitment to provide the Minimum Compensation is a material element of the City’s consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Bank fails to comply with these requirements. The Bank agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for the Bank’s noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(vii) The Bank understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Bank fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(viii) The Bank represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(ix) The City may conduct random audits of the Bank. Random audits shall be (A) noticed in advance in writing; (B) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (C) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (D) limited to one audit of the Bank every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(l) *Requiring Health Benefits for Covered Employees.* Unless exempt, the Bank agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“HCAO”), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(i) For each Covered Employee, the Bank shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Bank chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(ii) Notwithstanding the above, if the Bank is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (i) above.

(iii) The Bank’s failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify the Bank if such a breach has occurred. If, within 30 days after receiving City’s written notice of a breach of this Agreement for violating the HCAO, the Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Bank fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies

set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(iv) Any subcontract entered into by the Bank shall require the subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Bank shall notify City's Office of Contract Administration when it enters into such a subcontract and shall certify to the Office of Contract Administration that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the subcontract. The Bank shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Bank based on the subcontractor's failure to comply, provided that City has first provided the Bank with notice and an opportunity to obtain a cure of the violation.

(v) The Bank shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to the Bank's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(vi) The Bank represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(vii) The Bank shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

(viii) The Bank shall keep itself informed of the current requirements of the HCAO.

(ix) The Bank shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subcontractors and subtenants, as applicable.

(x) The Bank shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

(xi) The Bank shall allow City to inspect the Bank's job sites and have access to the Bank's employees in order to monitor and determine compliance with HCAO.

(xii) The City may conduct random audits of the Bank to ascertain its compliance with HCAO. The Bank agrees to cooperate with City when it conducts such audits.



(xiii) If the Bank is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Bank later enters into an agreement or agreements that cause the Bank's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Bank and the City to be equal to or greater than \$75,000 in the fiscal year.

(m) *Prohibition on Political Activity with City Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Bank may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Bank agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the Bank violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Bank from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Bank's use of profit as a violation of this section.

(n) *Graffiti Removal.* Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

The Bank shall remove all graffiti from any real property owned or leased by such Bank in the City and County of San Francisco within forty eight (48) hours of the earlier of such Bank's (i) discovery or notification of the graffiti or (ii) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require any Bank to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (A) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (B) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Section 101 et seq.).

Any failure of the Bank to comply with this Section of this Agreement shall constitute a material breach of this Agreement.

(o) *Food Service Waste Reduction Requirements.* The Bank agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, the Bank agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Bank agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of such Bank's failure to comply with this provision.

(p) *Preservative-treated Wood Containing Arsenic.* The Bank may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Bank may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Bank from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

(q) *Nondisclosure of Private Information.* The Bank agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "*Nondisclosure of Private information Ordinance*"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Bank agrees to all of the following:

(i) Neither the Bank nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (1) the disclosure is authorized by this Agreement;
- (2) the Bank received advance written approval from the Contracting Department to disclose the information; or
- (3) the disclosure is required by law or judicial order.

(ii) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(iii) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(iv) Any failure of the Bank to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar the Bank, or bring a false claim action against the Bank.

(r) *Proprietary or Confidential Information of City.* The Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the City and its obligations, (g) with the consent of the City or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Bank on a non-confidential basis from a source other than the City. For the purposes of this Section, "Information" means all information received from the City relating to the City or its business, other than any such information that is available to the Bank on a non-confidential basis prior to disclosure by the City; *provided* that, in the case of information received from the City after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the

same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(s) *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (i) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (ii) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (iii) conspires to defraud the City by getting a false claim allowed or paid by the City; (iv) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (v) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

(t) *Subcontracting.* Except as otherwise provided in this Agreement, the Bank is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

(u) *Non-Waiver of Rights.* The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

(v) *City a Third Party Beneficiary.* The City is hereby designated as a third party beneficiary for the purpose of enforcing all of the obligations of the Bank contained in this Exhibit C to this Agreement.