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LOAN AGREEMENT (2020-1)

Between

BANK OF AMERICA, N.A.

and

THE CITY OF SANTA CLARA

Dated as of April 1, 2020

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## LOAN AGREEMENT (2020-1)

This LOAN AGREEMENT (2020-1), dated as of April 1, 2020, is entered into between the CITY OF SANTA CLARA, a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California (the “City”), and BANK OF AMERICA, N.A., together with its successors and assigns (the “Bank”).

### WITNESSETH:

WHEREAS, the City makes expenditures from its Electric Utility Fund from time to time to pay the costs of acquisition and construction of extensions, additions and improvements to its Electric Utility system; and

WHEREAS, Section 1321(e) of the City’s Charter authorizes the City to issue revenue bonds for the purpose of financing the generation, production, transmission and distribution of electric energy, including the acquisition and/or construction of land and facilities therefor, and provides that the City may avail itself of the procedures authorized by the general laws of the State for the issuance of such revenue bonds or the City Council of the City (the “City Council”) may, by ordinance or resolution effective upon adoption, set up and establish a procedure for the issuance of such revenue bonds and all matters pertaining to the issuance and sale of such bonds; and

WHEREAS, on May 8, 1984 the City Council adopted its Resolution No. 4796, entitled “A Resolution of the City Council of the City of Santa Clara Establishing Procedures for the Authorization, Issuance and Sale of Electric Utility Revenue Bonds,” as amended by Resolution No. 4804, adopted by the City Council on May 29, 1984, and as amended by Resolution No. 7313, adopted by the City Council on April 25, 2006; and, on April 30, 1985 the City Council adopted its Resolution No. 4934, entitled “A Resolution of the City Council of the City of Santa Clara Establishing Procedures for the Authorization, Issuance and Sale of Refunding Electric Utility Revenue Bonds,” as amended by Resolution No. 4966, adopted by the City Council on July 9, 1985, as supplemented by Resolution No. 4967 adopted by the City Council on July 9, 1985, and as amended by Resolution No. 7314 adopted by the City Council on April 25, 2006 (collectively, the “Procedural Resolution”); and

WHEREAS, pursuant to the City Charter, the Procedural Resolution, and the Amended and Restated Electric Revenue Bond Indenture, dated as of March 1, 2011 (as amended, modified, supplemented or restated, the “Indenture”), by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Prior Bonds Trustee”), as supplemented by a First Supplemental Electric Revenue Bond Indenture, dated as of March 1, 2011, by and between the City and the Trustee, the City has heretofore issued \$54,830,000 aggregate principal amount of its Electric Revenue Refunding Bonds, Series 2011 A (the “Prior Electric Revenue Bonds”), of which \$54,830,000 principal amount remains outstanding and unpaid; and

WHEREAS, pursuant to Section 4.01 of the Indenture, all Adjusted Net Revenues remaining after the application thereof for the payment of the Electric Revenue Bonds (as defined herein) as provided in the Indenture, shall be available to the City for all lawful City

purposes, including the payment of all amounts required to be paid under any other resolution, indenture or other agreement of the City for principal, interest and any other debt service requirements on subordinate obligations of the City; and

WHEREAS, the City Council has determined that it is in the best interests of the City to enter into a credit facility with a bank for the purpose of borrowing moneys, to be applied, together with other available funds to be made available upon the delivery thereof, for (i) the refunding of all of the outstanding Prior Electric Revenue Bonds; and (ii) the payment of certain costs related to such transaction; and for the indebtedness created under such credit facility to be evidenced by a subordinate electric revenue bond (the “*Subordinate Bond*” as further defined herein) to be issued by the City and delivered to the Bank as authorized by Resolution No. [ ] adopted by the City Council on April 7, 2020 (the “*Authorizing Resolution*”) and pursuant to the City Charter, the Procedural Resolution, the Bond Order, Fiscal Agent Agreement and Pricing Certificate of the City dated April 7, 2020 (the “*Bond Order*”) and such credit facility; and

WHEREAS, the Bank is willing to provide a credit facility for such purposes on the terms and conditions set forth in this Agreement; and

WHEREAS, pursuant to the Authorizing Resolution, the City Council has authorized the City to enter into this Agreement in order to establish and declare the terms and conditions upon which such indebtedness shall be incurred and, in accordance with the Authorizing Resolution and the Bond Order, such Subordinate Bond shall be issued and secured and to provide for the repayment thereof; and

WHEREAS, pursuant to the Authorizing Resolution, the City Council has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized to execute and enter into this Agreement;

NOW, THEREFORE, in consideration of the respective agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE ONE

### DEFINITIONS

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

“*Act*” has the meaning set forth in Section 7.18 hereof.

“*Adjusted Net Revenues*” has the meaning set forth in the Indenture.

*“Agreement”* means this Loan Agreement (2002-1), as amended, modified, supplemented or restated.

*“Annual Debt Service”* has the meaning set forth in the Indenture.

*“Authorized City Representative”* means the City Manager, the Director of Finance or the Chief Electric Utility Officer of the City or any designee of any of the foregoing duly authorized to perform the act in question.

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

*“Available Electric Revenues”* means for any period, the Adjusted Net Revenues for such period less all amounts required to be paid under the Indenture for principal, interest, reserve fund and any other debt service or other requirements on the Electric Revenue Bonds and any Parity Debt as the same shall become due in such period.

*“Average Annual Debt Service”* means, as of any date of calculation, the quotient obtained by dividing (1) the sum of the Annual Debt Service on the Secured Debt for all Fiscal Years commencing with the Fiscal Year in which such calculation is made and terminating in the last Fiscal Year in which any Debt Service on such Secured Debt is due (or assumed to be due under the definition of Debt Service), by (2) the number of such Fiscal Years. For purposes of Section 5.12, the City shall include Secured Debt in all such calculations.

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

*“Bank-Related Persons”* means the Bank and its officers, directors, employees and its agents selected in good faith.

*“Bond Counsel”* means a nationally recognized bond counsel firm selected by the City and acceptable to the Bank.

*“Bond Law”* has the meaning set forth in the Indenture.

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

*“Business Day”* means any day other than a Saturday, Sunday or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed.

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

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

“*Change in Law*” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority which has the purpose or effect of imposing federal income taxation upon interest received on the Subordinate Bond, or obligations of the general character of the Subordinate Bond, or causing interest on the Subordinate Bond, or obligations of the general character of the 2020 Bonds, to be includable in gross income for purposes of federal income taxation.

“*City*” means the City of Santa Clara, a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State.

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

“*Closing Date*” means the date on which the conditions set forth in Section 3.1 have been satisfied or waived by the Bank.

“*Code*” means the Internal Revenue Code of 1986, and any successor statute thereto.

“*Compliance Certificate*” means the Compliance Certificate attached hereto as Exhibit D.

“*Conversion Agreement*” means an agreement executed by the City and the Bank in substantially the form attached as Exhibit B hereto providing for the conversion of the interest rate on the Subordinate Bonds and the Loan evidenced thereby from the Taxable Rate to the Tax-Exempt Rate pursuant to Section 2.2(b) hereof.

“*Conversion Date*” has the meaning set forth in Section 2.2(b) hereof.

“*Debt Service*” has the meaning set forth in the Indenture. For purposes of Section 5.12, the City shall include Secured Debt in all such calculations.

“*Default Rate*” means a rate per annum equal to twelve percent (12%).

“*Determination of Taxability*” means a determination that an Event of Taxability (as defined below) has occurred, which determination shall be deemed to have been made upon the first to occur of the following:

(i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred;

(ii) on the date when the City shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from

time to time) that, based upon filings of the City, or upon any review or audit of the City or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iii) on the date when the City shall receive notice from the Bank that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Bank the interest on the Loans due to the occurrence of an Event of Taxability;

*provided, however,* no Determination of Taxability shall occur under subparagraph (ii) or (iii) hereunder unless the City has been afforded the reasonable opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Bank, the City shall promptly reimburse the Bank for any payments, including any taxes, interest, penalties or other charges, the Bank shall be obligated to make as a result of the Determination of Taxability.

*“Electric Revenue Bonds”* has the meaning given to the term “Bonds” in the Indenture.

*“EMMA”* means the Electronic Municipal Market Access system of the Municipal Securities Rulemaking Board.

*“Enterprise”* has the meaning set forth in the Indenture.

*“Enterprise Property”* means Property owned or controlled by the City and used by the Enterprise.

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

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

*“Event of Default”* means any of the events set forth as a “Level 1 Event of Default,” a “Level 2 Event of Default,” or a “Level 3 Event of Default” in Section 6.1 hereof.

*“Event of Taxability”* means a (i) Change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by

the City of any misrepresentation herein or in any certificate required to be delivered hereunder) which has the effect of causing interest paid or payable on the Loans to become includable, in whole or in part, in the gross income of the Bank for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the Loans to become includable, in whole or in part, in the gross income of the Bank for federal income tax purposes.

“*Excess Interest*” has the meaning set forth in Section 2.10 hereof.

“*Fiscal Agent*” means the Fiscal Agent for the Subordinate Bond appointed by the City pursuant to the Bond Order.

“*Fitch*” means Fitch Ratings, or any successor rating agency.

“*GAAP*” means generally accepted accounting principles in the United States applicable to governmental entities as in effect from time to time, applied by the City on a basis consistent with the City’s most recent financial statements furnished to the Bank pursuant to Section 5.1(a) hereof.

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

“*Governmental Authority*” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, agency, body, authority, bureau or entity (including the Federal Reserve Board, any central bank or any comparable authority), or any arbitrator with authority to bind a party at law.

“*Guarantee*” by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of any other Person of the type described in clauses (a), (b), (c), (d), (e) or (f) of the defined term “Indebtedness.”

“*Hedging Instrument*” means any interest rate swap agreement, forward payment conversion agreement, futures or contracts providing for payment based on levels of, or changes in, interest rates or other indices, or contracts to exchange cash flows or a series of payments or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, rate, spread or similar exposure.

“*Indebtedness*” 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 Indebtedness of others secured by a lien on any asset of such Person, whether or not such Indebtedness are assumed by such Person, (f) all Guarantees by such Person of Indebtedness of other Persons, other than Guarantees pursuant to financial guaranty insurance policies or similar instruments and (g) all Hedging Instruments.

“*Indenture*” has the meaning set forth in the recitals hereto.

“*Indenture Event of Default*” means an “Event of Default” as defined in the Indenture.

“*Interest Payment Date*” means January 1 and July 1 of each calendar year.

“*Laws*” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*Loan*” has the meaning set forth in Section 2.1 hereof.

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

“*Material Adverse Effect*” means (a) a material adverse effect on the ability of the City to timely perform its obligations under this Agreement or the Subordinate Bond or (b) a material adverse change in, or material adverse effect upon, the legality, validity, binding effect or enforceability against the City of any material provision of any Related Document to which it is a party.

“*Maturity Date*” means [July 1, \_\_\_\_].

“*Maximum Rate*” means the lesser of (a) the maximum non-usurious rate of interest permitted by applicable law and (b) 12% per annum.

“*Moody’s*” means Moody’s Investors Service, Inc. and any successor rating agency.

“*Non-Conversion Taxable Rate*” means \_\_\_\_ percent (\_\_\_\_%) per annum.<sup>1</sup>

“*Obligations*” means all payment obligations of the City owed to the Bank arising hereunder, including, without limitation, all obligations to pay the principal of and interest on the

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<sup>1</sup> **Note to Draft:** Bank to determine the rate two days before closing.

Loan (as evidenced by the Subordinate Bonds) and to pay all other amounts payable to the Bank arising under or pursuant to this Agreement.

*“Original Payment Date”* means, with respect to the Loan, each date on which the principal of the Loan would have been payable if there had been no prepayment of the Loan.

*“Other Taxes”* has the meaning set forth in Section 7.1 hereof.

*“Parity Debt”* has the meaning set forth in the Indenture.

*“Participant”* has the meaning set forth in Section 7.5 hereof.

*“Payment Account”* means the account designated in writing from time to time by the Bank to the City. Each such designation shall take effect two (2) Business Days after delivery of notice of designation to the City.

*“Person”* means an individual, 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.

*“Plan”* means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code.

*“Potential Default”* means an event or condition which, but for the lapse of time or the giving of notice, or both, would become an Event of Default.

*“Prepaid Installment”* means, for an Original Payment Date for a Loan, the amount of principal the Loan which would have been paid on such Original Payment Date but for the prepayment of all or a portion of the Loan.

*“Prepayment Fee”* has the meaning set forth in Exhibit C hereof.

*“Procedural Resolution”* has the meaning set forth in the recitals hereto.

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

*“Rating Agency”* means, at any time, any of Fitch, Moody’s or S&P to the extent that such rating agency has, at the request of the City, rated, and maintains a rating in respect of, unenhanced Electric Revenue Bonds or Parity Debt. *“Rating Agencies”* means each such Rating Agency that, at such time, at the request of the City, maintains a rating on unenhanced Electric Revenue Bonds or Parity Debt.

*“Reimbursed Party”* has the meaning set forth in Section 7.13(b) hereof.

“*Related Documents*” means, collectively, this Agreement, the Subordinate Bond, the Procedural Resolution and the Indenture.

“*Revenues*” has the meaning set forth in the Indenture.

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

“*Sanctions*” 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.

“*Secured Debt*” has the meaning set forth in Section 6.1(II)(g) hereof.

“*State*” means the State of California.

“*Subordinate Bond*” means the Subordinated Electric Revenue Refunding Bonds, Series 2020-1 of the City evidencing the obligation of the City to repay the Loan and interest thereon, issued under the Bond Law and in accordance with the Authorizing Resolution, the Bond Order and this Agreement.

“*Swap*” means any interest rate swap agreement, forward payment conversion agreement, futures or contracts providing for payment based on levels of, or changes in, interest rates or other indices, or contracts to exchange cash flows or a series of payments or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, rate, spread or similar exposure.

“*Tax-Exempt Rate*” means [\_\_\_\_] percent ([\_\_\_\_]%) per annum.<sup>2</sup>

“*Taxable Date*” means, from and after the Conversion Date, the date on which interest on the Loan is first includable in gross income of the Bank thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“*Taxable Rate*” means [\_\_\_\_] and [\_\_\_\_] percent ([\_\_\_\_]%) per annum.<sup>3</sup>

“*Taxes*” has the meaning set forth in Section 7.1 hereof.

*Section 1.2. Incorporation of Certain Definitions by Reference.* Each capitalized term used herein and not defined herein shall have the meaning provided therefor in Indenture.

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<sup>2</sup> **Note to Draft:** Bank to determine rate two days before closing.

<sup>3</sup> **Note to Draft:** Bank to determine rate two days before closing.

*Section 1.3. Computation of Time Periods.* In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

*Section 1.4. Construction.* Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular includes the plural, the part includes the whole and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “including” has the meaning “including, but not limited to.” The section headings contained in this Agreement and the table of contents preceding this Agreement is for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document 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 or in any other Related Document).

*Section 1.5. Accounting Matters.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP.

*Section 1.6. Times.* All times are Pacific time.

## ARTICLE TWO

### LOAN

*Section 2.1. Loan.* Subject to the terms and conditions set forth herein, the Bank agrees to make a loan to the City in the amount of \$ \_\_\_\_\_ on the Closing Date (the “*Loan*”). The Loan shall be made available in immediately available funds on the Closing Date to the account of the City as directed by the City in writing to the Bank at least two (2) Business Days prior to the Closing Date. The indebtedness of the City created by the Loan and the repayment obligation of the City therefor shall be evidenced by the Subordinate Bond to be issued by City and delivered to the Bank, as purchaser thereof, on the Closing Date in accordance with Section 2.6 hereof.

*Section 2.2. Interest.* (a) Subject to adjustment as provided herein, interest shall accrue on the Loan from and including the Closing Date to but not including the Conversion Date, if any, at the Taxable Rate and shall bear interest from the Conversion Date, if any, to the Maturity Date (or date of prepayment) at the Tax-Exempt Rate. In the event that the City has satisfied all other conditions to conversion of the interest rate on the Loan to the Tax-Exempt Rate as set forth in Section 2.2(b) and the Bank does not execute the Conversion Agreement and any necessary tax certifications required from it, including an issue price certificate, on or before

July 1, 2021 (or such later date as shall be agreed to by the Bank and the City), the Loan shall bear interest at the Non-Conversion Taxable Rate. From and after the Taxable Date, the interest rate on the Loan shall be established at a rate at all times equal to the Taxable Rate. Except as provided in the immediately succeeding sentence, interest shall accrue on the Loan on the basis of a 360-day year consisting of twelve (12) thirty (30) day months. Upon the occurrence and during the continuance of an Event of Default, the Loan shall bear interest at the Default Rate and shall be calculated on the basis of a 365-day year and actual days elapsed. Notice of any adjustment in the interest rate as hereinabove provided shall be provided by the Bank to the City and the Fiscal Agent. Interest shall be payable semi-annually on January 1 and July 1 of each calendar year, commencing on July 1, 2020, in the amounts set forth on Exhibit A (as it may be adjusted in accordance with Section 2.4). Following the Maturity Date, any accrued and unpaid interest shall be payable upon demand.

(b) On any Business Day during the period that begins on **[Insert the date that is 90 days before the applicable July 1, 2021 redemption date for the refunded bonds]** (or, if earlier, the first day (if any) on which the Subordinate Bond may be converted to a tax-exempt obligation as a result of an amendment to section 149(d) of the Code), and ends on July 1, 2021, the interest rate on the Loan and the Subordinate Bond may be converted from the initial Taxable Rate to the Tax-Exempt Rate in accordance with the provisions of this Section 2.2(b). The conversion of the interest rate on the Loan and the Subordinate Bond shall not become effective unless all of the following conditions are satisfied (the date upon which such conditions have been satisfied, the “Conversion Date”):

(1) the City shall have delivered to the Bank an opinion of Bond Counsel to the effect that, as of the Conversion Date, interest on the Subordinate Bond is excludable from the gross income of the holder thereof for federal income tax purposes;

(2) Bond Counsel shall have received a tax certificate of the City, and such other certifications from the City and the Bank, including issue price certificates, in a form sufficient to support its opinion described in paragraph (1) above; and

(3) the City and the Bank shall have executed a Conversion Agreement substantially in the form attached hereto as Exhibit B and delivered an original executed copy of such agreement to the Fiscal Agent.

The City agrees to execute and deliver on the Conversion Date an IRS Form 8038 (or other required information return).

*Section 2.3. Determination of Taxability.* (a) In the event a Determination of Taxability occurs at any time after the Conversion Date, the City hereby agrees to pay to the Bank on demand therefor any interest, penalties or charges owed by the Bank (or, subject to Section 7.5(d) hereof, any Participant, as applicable), as a result of interest on the Loan becoming includable in the gross income of such owner or beneficial owner of the Subordinate Bond. Pursuant to Section 2.2 and from and after the Determination of Taxability, the Loan shall bear interest at the Taxable Rate.

**Section 2.4. Repayment.** The Loan shall be repaid in the annual principal installments on July 1 of each calendar year, commencing on [July 1, 20\_\_], and ending on the Maturity Date, as are set forth on Exhibit A hereto. Each installment shall be in the amount set forth on Exhibit A hereto. If a Determination of Taxability occurs or if the Loan is prepaid in part, the installments set forth in Exhibit A shall be recalculated by the Bank (and approved by an Authorized City Representative) to reflect the change in interest rate or reduction in principal outstanding, as the case may be, and the revised Exhibit A shall be attached to this Agreement by the City and Bank in lieu of the existing Exhibit A and a copy thereof delivered by the Bank to the Fiscal Agent without any further action required.

*Section 2.5. Prepayment Fee.* The Loan may be prepaid in whole, or in part, on any date, with five (5) Business Days prior written notice to the Bank by payment of an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment plus the Prepayment Fee, if any.

*Section 2.6. The Subordinate Bond.* On the Closing Date, the City shall issue and deliver to the Bank, as purchaser thereof, the Subordinate Bond evidencing the repayment obligation of the City with respect to the Loan, duly executed in accordance with the Authorizing Resolution and the Bond Order. The Subordinate Bond shall initially be delivered as a single initial bond in an amount equal to the aggregate principal amount of the Loan, payable to the Bank in stated installments. The Bank (and any transferee of its rights or obligations under this Agreement in accordance with Section 7.5 hereof shall endorse on the schedules forming a part thereof, appropriate notations to evidence the date and amount of each payment of principal made by the City with respect thereto; provided, however, that the failure of the Bank or such transferee to make any such recordation or endorsement shall not affect the obligations of the City hereunder or under such Subordinate Bond. Notwithstanding the foregoing, all payments made by the City to the Bank (or to any the transferee thereof pursuant to Section 7.5) shall be valid and effectual and shall discharge the liability of the City with respect to the Loan to the extent of the sums paid.

*Section 2.7. Method of Payment; Etc.* All payments to be made by the City under this Agreement (other than payment of counsel fees which shall be paid directly to counsel) shall be made at the Payment Account of the Bank not later than 1:00 p.m., Los Angeles time, on the date when due and shall be made in lawful money of the United States of America in freely transferable and immediately available funds. Any payments received by the Bank later than 3:00 p.m. on any day shall be deemed to have been paid on the next succeeding Business Day and interest shall accrue thereon until such next Business Day at the rate applicable thereto.

*Section 2.8. Reserved.*

*Section 2.9. Default Rate.* Upon the occurrence and during the continuance of an Event of Default, all Obligations shall bear interest until paid in full at a rate per annum equal to the Default Rate, payable, to the extent not paid when otherwise due, upon demand.

*Section 2.10. Maximum Rate; Payment of Fee.* If the rate of interest on any Obligation shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such interest period; and, (b) to the extent permitted by law, interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof without regard to the limitation of the Maximum Rate; and (ii) the Maximum Rate (the “*Excess Interest*”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time the City shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. In consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by law, the City shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest on the date on which the unpaid principal of the Loan is repaid in full.

*Section 2.11. Security.* The City hereby pledges the Available Electric Revenues to the payment of the Loan and the Subordinate Bond and all Obligations of the City under this Agreement (without duplication) and all other obligations of the City secured by the Available Electric Revenues on parity therewith without priority or distinction of one over the other. Said pledge of and lien on Available Electric Revenues shall be valid and binding from and after delivery by the City of this Agreement and the Subordinate Bond, without any physical delivery thereof or further act. The pledge of Available Electric Revenues herein made is irrevocable until the Loan and the Subordinate Bond have been paid and retired in full and any related Obligations of the City under this Agreement have been satisfied. The obligations of the City with respect to the payment of the Loan and the Subordinate Bond are special, limited obligations of the City payable as to both principal of and interest from, and secured solely by such pledge of Available Electric Revenues, and the City shall not be required to advance money from any other source other than the Available Electric Revenues. The Available Electric Revenues constitute a trust fund for the security and payment of the interest on and principal of the Loan and the Subordinate Bond and all Obligations of the City under this Agreement (without duplication) and all other obligations of the City secured by the Available Electric Revenues on parity therewith; provided, however, that for any period, all Available Net Revenues remaining after satisfying the City’s payment obligations with respect to the Loan and the Subordinate Bond and all Obligations of the City under this Agreement (without duplication) and all other obligations of the City secured by the Available Electric Revenues on parity therewith on each payment date therefor shall thereafter be available to the City for all lawful City purposes. The general fund of the City is not liable, and the credit or taxing power of the City is not pledged, for the payment of the Loan or the Subordinate Bond or any other Obligations of the City hereunder.

## ARTICLE THREE

### CONDITIONS PRECEDENT

*Section 3.1. Conditions Precedent to Effectiveness.* This Agreement shall become effective upon the satisfaction or waiver by the Bank of the following conditions:

(a) *Bank Determinations.* On the Closing Date, the Bank shall be satisfied that (i) there shall exist no Potential Default or Event of Default; (ii) the representations and warranties of the City contained in Article Four of this Agreement that are not qualified in any way by reference to “material”, “materiality”, “Material Adverse Effect” or similar qualifier shall be true and correct in all material respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all material respects as of such specified date); (iii) the representations and warranties of the City contained in Article Four of this Agreement that are qualified by reference to “material”, “materiality”, “Material Adverse Effect” or similar qualifier shall be true and correct in all respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all respects as of such specified date); and (iv) no event or change shall have occurred since June 30, 2019 and no circumstance shall exist that could reasonably be expected to have a Material Adverse Effect on the City.

(b) *Documents.* On the Closing Date, the Bank shall have received executed copies of each of the following documents, which documents shall be in full-force and effect on the Closing Date and in form and substance satisfactory to the Bank:

(i) a certified copy of the Indenture (including all amendments and supplements to the Closing Date);

(ii) the Subordinate Bond; and

(iii) this Agreement.

(c) *Legal Opinions.* The Bank shall have received legal opinions, in form and substance satisfactory to the Bank, addressed to the Bank and dated the Closing Date, of:

(i) Stradling Yocca Carlson & Rauth, a Professional Corporation,, special counsel to the City and (ii) the City Attorney.

(d) *Supporting Documents of the City.* There shall have been delivered to the Bank such information and copies of documents, approvals (if any) and records certified, where appropriate, of corporate and legal proceedings as the Bank may have requested relating to the City's entering into and performing this Agreement, the other Related Documents to which it is a party and the transactions contemplated hereby and thereby. Such documents shall, in any event, include:

(i) a certificate of the City, in form and substance satisfactory to the Bank, executed by an executive officer of the City, dated the Closing Date to the effect that: (A) there exists no Potential Default or Event of Default; (B) the representations and warranties of the City contained in Article Four of this Agreement that are not qualified in any way by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all material respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all material respects as of such specified date); (C) the representations and warranties of the City contained in Article Four of this Agreement that are qualified by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all respects as of such specified date); (D) no event or change shall have occurred since June 30, 2019 and no circumstance shall exist that the City believes could reasonably be expected to have a Material Adverse Effect; and (E) all Governmental Approvals which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the City of its obligations under the Related Documents, have been duly obtained;

(ii) an incumbency and signature certificate with respect to the officers or agents of the City who are authorized to execute any documents or instruments on behalf of the City under this Agreement and the other Related Documents being delivered on the Closing Date to which the City is a party; and

(iii) the City's most recent audited financial statements of the Enterprise Fund, current annual budget of the Enterprise and investment policy.

(e) *Payment of Fees and Expenses.* The Bank shall have received evidence that all fees and expenses payable on the Closing Date pursuant to this Agreement shall have been paid or provision for their payment satisfactory to the Bank shall have been made.

(f) *Material Adverse Change.* No Material Adverse Effect shall have occurred since June 30, 2019.

(g) *Proceedings.* The Bank shall have received such other certificates or opinions as the Bank may reasonably request, which request shall be made not later than five (5) Business Days prior to the Closing Date.

## ARTICLE FOUR

### REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to enter into this Agreement, the City represents and warrants to the Bank as follows:

*Section 4.1. Organization, Powers, Etc.* The City is a municipality and chartered city of the State of California duly organized and validly existing under and pursuant to the Constitution and laws of the State of California, including its City Charter and has: (a) full power and authority under the Constitution and the laws of the State of California, including its City Charter, to enter into and perform its obligations under this Agreement and the other Related Documents and (b) all material governmental licenses, authorization, consents and approvals required to carry on the business of the Enterprise as now conducted and to enter into and perform its obligations under this Agreement and the other Related Documents.

*Section 4.2. Authorization, No Contravention.* The execution, delivery and performance by the City of this Agreement and each other Related Document have been duly authorized by all necessary action, and require no action or consent by or in respect of, or filing with, any Governmental Authority not taken or received as of the date hereof. The execution and delivery by the City of this Agreement and the other Related Documents to which it is a party do not and will not (a) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the City is subject; (b) result in a material breach of or constitute a material default under the provisions of any resolution, indenture, loan or credit agreement or any other agreement, lease or instrument to which the City may be or is subject or by which it, or any Enterprise Property, is bound; or (c) result in, or require, the creation or imposition of any mortgage, deed of trust, assignment, pledge, lien, security interest or other charge or encumbrance of any nature or with respect to any Enterprise Property other than the pledge of Adjusted Net Revenues created by the Indenture and the pledge of Available Electric Revenues created hereby. The performance by the City of this Agreement and the other Related Documents to which it is a party does not and will not (i) violate in any material respect any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the City is subject; (ii) result in a breach of or constitute a default under the provisions of any resolution, indenture, loan or credit agreement or any other agreement, lease or instrument to which the City may be or is subject or by which it, or any Enterprise Property, is bound; or (iii) result in, or require, the creation or imposition of any mortgage, deed of trust, assignment, pledge, lien, security interest or other charge or encumbrance of any nature or with respect to any Enterprise Properties (other than the pledge of Adjusted Net Revenues created by the Indenture and the pledge of Available Electric Revenues created hereby), except in the case of clause (ii) or (iii) any such breach, default, creation or imposition that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

*Section 4.3. Binding Effect.* This Agreement, the Subordinate Bond and each other Related Document to which the City is a party constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles whether or not sought, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal corporations in the State.

*Section 4.4. Financial Information.* The City's audited Electric Utility Enterprise Fund statement of net position as of June 30, 2019, statement of revenues, expenses and changes in net position for the year ended June 30, 2019 and statements of cash flows for the year ended June 30, 2019 and the unqualified opinion letter dated December 19, 2019, of Maze & Associates, independent certified public accountants, copies of which have been delivered to the Bank, are in all respects complete and correct and fairly present the financial condition of the City as at such dates for the periods covered by such statements, all in conformity with GAAP. Since June 30, 2019, there has been no Material Adverse Effect.

*Section 4.5. Litigation.* There is no action, suit or proceeding pending against or, to the best knowledge of the City, threatened against the City relating to the Bond Law, this Agreement, the Subordinate Bond or any other Related Document before any court or other Governmental Authority in which there is a reasonable possibility of an adverse decision which could reasonably be expected to have a Material Adverse Effect.

*Section 4.6. Employee Benefit Plans, Etc.* The City is not subject to Title I reporting and disclosure requirements, Title II or Title IV of ERISA and has no obligation or liability under or in respect of any "employee benefit plan" within the meaning of Section 3(3) of ERISA or any other form of bonus, incentive compensation, deferred compensation or other similar plan or arrangement.

*Section 4.7. Environmental Laws.* The City has not received notice to the effect that its Enterprise operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

*Section 4.8. No Sovereign Immunity.* The City is not entitled to claim the defense of sovereign immunity in any action, suit or proceeding arising under or relating to this Agreement or any of the other Related Documents (a) for monetary damages or (b) for the execution or enforcement of any judgment (subject to limitations on legal remedies against public agencies in the State), nor may there be attributed to the City any such immunity (whether or not claimed).

*Section 4.9. Disclosure.* All information heretofore furnished (including pursuant to any representation or warranty) by the City to the Bank for purposes of or in connection with the

negotiation of this Agreement and the transactions contemplated hereby is, and all such information hereafter furnished by the City to the Bank will be, true, accurate and complete in all material respects on the date as of which such information is stated or certified. There is no fact known to the City which the City has not disclosed to the Bank in writing which the City believes will result in a Material Adverse Effect or, so far as the City can now reasonably foresee, is likely to result in a Material Adverse Effect.

*Section 4.10. Status of Obligations.* This Agreement creates a valid security interest in the Available Electric Revenues as security for the punctual payment of the Loan and the Subordinate Bond and the other Obligations of the City hereunder. All Obligations payable by the City under this Agreement are special limited obligations of the City payable solely from Available Electric Revenues, and the City shall not be required to advance money from any other source other than Available Electric Revenues. The general fund of the City is not liable, and the credit or taxing power of the City is not pledged, for the payment of the Loan or the Subordinate Bond or any other Obligations of the City hereunder.

*Section 4.11. Incorporated Representations.* The City makes each of the representations, warranties and covenants contained in the Indenture, and for the benefit of, the Bank as if the same were set forth at length herein together with all applicable definitions thereto. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the Indenture shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

*Section 4.12. Pending Legislation.* As of the Closing Date, there is no amendment to the Constitution of the State, any State law or any City law, or to the knowledge of the City, proposed amendment to the Constitution of the State, any State law or any City law certified for placement on a ballot within the State or the City, or any legislation that has passed either house of the United States Congress, or, to the knowledge of the City, any published judicial decision interpreting any of the laws of the United States, the Constitution of the State, any State law or any City law, the effect of which could reasonably be expected to result in a Material Adverse Effect.

*Section 4.13. Compliance.* To the best of its knowledge after due inquiry, the City is in compliance with all laws, ordinances, orders, rules and regulations applicable to the Enterprise, except to the extent noncompliance could not reasonably be expected to result in a Material Adverse Effect.

*Section 4.14. Default.* The City is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Related Document or other resolution, agreement or instrument to which it is a party which default could reasonably be expected to result in a Material Adverse Effect. No Event of Default has occurred and is continuing.

*Section 4.15. Margin Stock.* The City 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), and no portion of the proceeds of the Loan will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

*Section 4.16. Solvency.* As of the Closing Date, the Enterprise is able to pay its debts and satisfy its liabilities as they come due, is solvent and has not made any assignment for the benefit of creditors.

*Section 4.17. Sanctions.*

(a) *Sanctions Concerns.* Neither the City, nor, to the knowledge of the City, any director or officer 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, or (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.

(b) *Anti-Corruption Laws.* The City has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and have instituted and maintained policies and procedures designed to promote and achieve compliance with such law.

## ARTICLE FIVE

### COVENANTS

The City will do, or will refrain from doing, as applicable, the following so long as any Obligations remain outstanding, unless the Bank shall otherwise consent in writing:

*Section 5.1. Reporting Requirements.* The City shall furnish to the Bank:

(a) as soon as available and in any event within 210 days after the end of each fiscal year, a statement of net position of the Electric Utility Enterprise Fund of the City as of the end of such Fiscal Year, a statement of revenues, expenses and changes in net assets or position of the Electric Utility Enterprise Fund of the City for such Fiscal Year and a statement of cash flows of the Electric Utility Enterprise Fund of the City for such Fiscal Year, in each case prepared in accordance with GAAP and in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an opinion thereon of a firm of independent public accountants of recognized national standing, selected by the City and reasonably acceptable to the Bank (it being understood that Maze & Associates, the City's current independent public accountants is reasonably acceptable to the Bank), to the effect that, in the opinion of such firm, (i) the audit was conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States and (ii) the fund financial statements of the City present fairly, in all material respects, the financial position of the business-type activities of the Enterprise, as of the end of the applicable

Fiscal Year, and the changes in financial position and cash flows thereof for the applicable Fiscal Year then ended in conformity with GAAP, which opinion shall contain no qualifications other than qualifications relating to the implementation of rules issued by the Government Accounting Standards Board;

(b) simultaneously with the delivery of each set of financial statements referred to in clause (i) above, a Compliance Certificate of the City signed by an Authorized City Representative (or a duly authorized designee of any such officer) stating that, to the best knowledge of such officer executing such certificate, there exists on the date of such certificate no Event of Default or, if any Event of Default then exists, setting forth the details thereof and the action which the City is taking or proposes to take with respect thereto;

(c) promptly after knowledge thereof by the City, written notice of the occurrence of any Event of Default, together with a statement of the City setting forth the details thereof and the action which the City is taking or proposes to take with respect thereto;

(d) promptly after formal notice or service of process has been properly served on the City, notice of any action, suit or proceeding before any court or Governmental Authority against the City in which there is a reasonable probability of an adverse decision which could reasonably be expected to result in a Material Adverse Effect;

(e) promptly after obtaining knowledge thereof, written notice of any change in the long-term ratings assigned by a Rating Agency to any unenhanced Electric Revenue Bonds or Parity Debt;

(f) as soon as available to the City, copies of all enacted legislation (including new legislation, amended legislation or repealed legislation) the effect of which, in the reasonable judgment of the City, could reasonably be expected to have a Material Adverse Effect;

(g) promptly upon the adoption thereof, a copy of the Enterprise's five-year financial plan and the Enterprise's budget; and

(h) from time to time such additional information regarding the financial position, operations or business of the Enterprise as the Bank may reasonably request.

The City will be deemed to have complied with the requirement to provide the information set forth in this Section 5.1 to the extent such information has been duly posted within such time period on the City website (<https://www.santaclaraca.gov/>) or on EMMA.

*Section 5.2. Notices.* In addition to the documents and notices described in Section 5.1, the City will provide promptly to the Bank the following:

(a) notice of any event or circumstance known to the City which in the reasonable judgment of the City could reasonably be expect to result in a Material Adverse Effect;

(b) notice of any inquiry, investigation or audit of the Enterprise by the Securities and Exchange Commission, the Department of Justice or the Internal Revenue Service, of which the City has actual knowledge, whether or not received in writing by the City;

(c) notice of any proposed amendment or supplement to the Indenture and copies of all such amendments and supplements promptly following the execution thereof, in each case, other than any supplement to the Indenture setting forth only the terms of a new series of Electric Revenue Bonds; and

(d) any reportable event notice relating to the Electric Revenue Bonds (as described in b(5)(i)(C) of Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended) disseminated, distributed or provided by the City in satisfaction of its obligations under any continuing disclosure obligation relating to the Electric Revenue Bonds (or notice that such event notice has been filed by the City with EMMA and is publicly available).

*Section 5.3. Further Assurances.* The City 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 in the reasonable opinion of the Bank are necessary to effectuate the provisions of this Agreement and the other Related Documents.

*Section 5.4. Inspection of Property, Books and Record.* The City shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the Enterprise; and at any reasonable time and from time to time upon reasonable notice thereof, permit the Bank or any agents or representatives thereof, at the expense of the Bank, to examine and make copies of and abstracts from the records and books of account of, and to the extent permitted by applicable law, visit the properties of, the Enterprise and to discuss the affairs, finances and accounts of the Enterprise with any of the City's officers, trustees and (with notice to the City) independent auditors (and by this provision, the City authorizes said auditors to discuss with the Bank or its representatives the affairs, finances and accounts of the Enterprise).

*Section 5.5. Waiver of Immunity.* If as a result of a change in Law the defense of sovereign immunity in respect of contract claims becomes available to the City, the City agrees, to the fullest extent permitted by law, not to assert the defense of sovereign immunity in any proceeding to enforce any of the obligations of the City under this Agreement or the Subordinate Bond in any court of competent jurisdiction.

*Section 5.6. Compliance with Laws; Compliance with Agreements.* The City covenants that it will comply with the requirements of (a) all applicable laws of any Governmental Authority having jurisdiction over the City and any Enterprise Property, including, without limitation, the Bond Law, all Environmental Laws and ERISA, and (b) all investment policy guidelines of the City; in each case, the non-compliance with which would have a Material Adverse Effect, unless the same is being contested in good faith and by appropriate proceedings and such contest shall operate to stay the Material Adverse Effect of any such non-compliance. The City will observe and perform all of its obligations under this Agreement and the Subordinate Bond and all of its material obligations under the Indenture. The City will maintain in effect and enforce policies and procedures designed to ensure compliance by the City and its council members, officers, employees and agents with applicable Sanctions.

*Section 5.7. Disclosure to Transferees and Participants.* The City shall permit the Bank to disclose any information received by the Bank in connection herewith including, without limitation, the financial information described in Section 5.1(a) hereof, to any Bank Transferee or Participant.

*Section 5.8. Incorporation of Covenants.* From and after the date hereof and so long as this Agreement is in effect the City agrees that it will, for the benefit of the Bank, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the provisions of the Indenture material to the performance of the City's obligations hereunder (the obligations of the City set forth in Sections 4.01, 4.02 and Article V of the Indenture shall, for purposes of this Section 5.8, be considered material to the performance of the City's obligations hereunder), regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, all of which are incorporated herein by reference, mutatis mutandis, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and no termination, amendment, modification or waiver to any of the foregoing shall in any manner constitute a termination, amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Bank.

*Section 5.9. Maintenance of Tax-Exempt Status of the Loan.* After the Conversion Date, if any, the City shall not take any action or omit to take any action which, if taken or omitted, would adversely affect the exclusion of interest on the Subordinate Bond from gross income for purposes of federal income taxation or the exemption of such interest from California income taxes.

*Section 5.10. Insurance Requirements.* The City shall insure the properties of the Enterprise against loss or damage and shall maintain general liability insurance coverage against such risks and in such amounts as is customarily maintained by entities similarly situated and operating like properties and businesses to that of the Enterprise by insurance companies believed by the City to be responsible (as determined in its reasonable discretion). Notwithstanding the foregoing, the City may provide self-insurance in order to provide for the coverage described in the immediately preceding sentence.

*Section 5.11. Rates and Charges.* The City will, at all times while the Loan remains unpaid, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Enterprise so as to yield Revenues, in each Fiscal Year, sufficient so that Adjusted Net Revenues for such Fiscal Year shall be at least equal to 1.0 times the amount of Debt Service for such year on all Electric Revenue Bonds, Parity Debt, the Loan and all other Secured Debt secured by and payable from Adjusted Net Revenues or Available Electric Revenues. For purposes of determining compliance with this Section 5.11 or Section 5.12, Adjusted Net Revenues shall include the amounts on deposit in the Rate Stabilization Fund and any other unrestricted funds of the Enterprise designated by the City Council by resolution and available for the purpose of paying Operating Expenses and/or Debt Service (as such terms are defined in the Indenture).

*Section 5.12. Liens; Indebtedness.* (a) Except for the Lien over the Adjusted Net Revenues created by the Indenture, the City will not hereafter create or suffer to exist any Lien on the Available Electric Revenues on a basis that is senior to the Lien created pursuant to this Agreement. The City will not create or suffer to exist any Lien over any Enterprise Property which could reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing, in the event a Lien attaches after the Closing Date (i) to the Available Electric Revenues or (ii) to Enterprise Property and which if not removed could reasonably be expected to have a Material Adverse Effect, in either case the City shall take all reasonable action necessary to remove such Lien as soon as practicable. For avoidance of doubt, the Bank acknowledges that nothing herein is intended to preclude the future issuance by the City of additional Electric Revenue Bonds and Parity Debt in accordance with the terms of the Indenture or the ability of the City to incur Operating Expenses as defined in the Indenture.

(b) The City will not hereafter incur any Secured Debt without the prior written consent of the Bank unless the City can demonstrate that, based on Adjusted Net Revenues for any consecutive 12-month period out of the last 24 months prior to the issuance of such Secured Debt, Adjusted Net Revenues provide or will provide 1.10x the Average Annual Debt Service for all outstanding and any additional Secured Debt, with debt service coverage to be calculated as follows:

Numerator: Adjusted Net Revenues; and

Denominator: Average Annual Debt Service;

*provided* that the foregoing shall not apply to the first \$75,000,000 of Secured Debt issued by the City cumulatively after the Closing Date. For purposes of meeting the requirements set forth in either clause (i) above, there may be included in Adjusted Net Revenues for purposes of such calculation, an allowance for any increase in the rates, fees and charges for use of the Enterprise system that has become effective or been approved by the City Council prior to incurring the Secured Debt proposed to be issued but which, during all or any part of such Fiscal Year or 12-month period was not in effect, all in an amount equal to the amount by which Adjusted Net Revenues would have been increased if such increase in rates, fees or charges been in effect during the whole of such Fiscal Year or 12-month period.

*Section 5.13. Maintenance of Existence.* The City will preserve and maintain its existence as a municipal corporation and chartered city under the Constitution and laws of the State and will maintain exclusive control over the direction and operation of the Enterprise and the Enterprise Property and will not permit the Enterprise to merge or consolidate with or into any other Person or acquire substantially all of the assets of any other Person unless (i) the City continues to maintain exclusive control over the direction and operation of the Enterprise and the Enterprise Property, (ii) no Event of Default has occurred and is continuing or would result from such merger, consolidation or acquisition and (iii) such merger, consolidation or acquisition could not reasonably be expected to result in a Material Adverse Effect.

*Section 5.14. Use of Proceeds; Federal Reserve Regulations.* The City covenants that it will not knowingly, directly or indirectly, use the proceeds of the Loan to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions. No proceeds from moneys received hereunder shall be used by the City to purchase Margin Stock in violation of Regulation U, as amended, promulgated by the Board of Governors of the Federal Reserve System.

*Section 5.15. Accounting Changes.* The City shall not change its method of accounting or the times of commencement or termination of Fiscal Years or other accounting periods without first disclosing in writing such change to the Bank.

*Section 5.16. Maintenance of Enterprise Property.* The City shall maintain, preserve and keep all of its Enterprise Property in good repair, working order and condition (ordinary wear and tear excepted) and will, from time to time, make all needful and proper repairs, renewals, replacements, and additions and betterments thereto so that at all times the efficiency thereof shall be full preserved and maintained; *provided, however,* that nothing herein shall preclude the City from selling, transferring or disposing of portions of the Enterprise Property which have become nonoperative, worn out, obsolete or are otherwise not needed for the efficient and proper operation of the Enterprise. The City shall not change in any fundamental manner the use to which the Enterprise Property is currently made.

*Section 5.17. Preferential Repayment.* The City shall not permit any Person party to any agreement with the City the obligations of which are secured by a pledge of Available Electric Revenues on parity with the City's payment obligations under this Agreement, including, without limitation, any credit provider or liquidity provider, to have any right under such agreement to cause the acceleration, tender, redemption or repayment (including by term-out or shortened amortization) of such obligations, on a basis that is shorter than or more favorable than the basis that the Bank is entitled to receive hereunder.

*Section 5.18. Underlying Rating.* The City shall at all times maintain a rating on its long-term unenhanced Parity Debt and Bonds from at least one Rating Agency.

## ARTICLE SIX

### DEFAULTS

*Section 6.1. Events of Default and Remedies.* (I) The occurrence and continuance of one or more of the following events shall constitute a “Level 1 Event of Default” hereunder:

(i) 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 obligation secured by a lien, charge or encumbrance upon the Adjusted Net Revenues or the Available Electric Revenues; (ii) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, the City seeks to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; (iii) the City seeks appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of the Enterprise, or the City shall make a general assignment for the benefit of its creditors; (iv) there shall be commenced against the City any case, proceeding or other action of a nature referred to in clause (ii) or (iii) above and the same shall remain undismissed; (v) there shall be commenced against the City any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of the Enterprise Property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within sixty (60) days from the entry thereof; (vi) the City takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), (iii), (iv) or (v) above; or (vii) the City shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

(II) The occurrence and continuance of one or more of the following events shall constitute a “Level 2 Event of Default” hereunder:

(a) the City fails to pay, or cause to be paid, when due, the principal of or interest on the Loan or the Subordinate Bond; or

(b) (i) a court or other Governmental Authority with jurisdiction to rule on the validity of any Related Document to which the City is a party shall issue a final decision that (A) such Related Document is invalid and is not a binding agreement of the City; or (B) any provision of such Related Document relating to (I) the security for the Subordinate Bond and the other Obligations, (II) the City’s ability to pay the Subordinate Bond and the other Obligations or perform its obligations thereunder or (III) the rights and remedies of the Bank, in any such case is invalid and is not a binding agreement of the City; (ii) the City shall contest in writing the validity or enforceability of, or shall deny or disaffirm in writing its obligations under, (A) any Related Document to which the City is a party or (B) any provision of any Related Document relating to (I) the security for the Subordinate Bond and the other Obligations, (II) the City’s ability to pay

the Subordinate Bond and the other Obligations or perform its obligations thereunder or (III) the rights and remedies of the Bank; or (iii) the City shall seek an adjudication in a proceeding before a court or other Governmental Authority with jurisdiction to rule that (A) any Related Document to which the City is a party or (B) any provision of any Related Document relating to (I) the security for the Subordinate Bond and the other Obligations, (II) the City's ability to pay the Subordinate Bond and the other Obligations or perform its obligations thereunder or (III) the rights and remedies of the Bank, in any such case is not valid and binding on the City; or

(c) (i) any Related Document to which the City is a party; or (ii) any provision of any Related Document relating to (A) the security for the Subordinate Bond and the other Obligations, (B) the City's ability to pay the Subordinate Bond and the other Obligations or perform its obligations thereunder or (C) the rights and remedies of the Bank; or (iii) any other provision of any Related Document to which the City is a party that directly protects the Bank, in any such case shall cease for any reason to be in full force or effect; or

(d) one or more judgments, decrees or orders for the payment of money in excess of \$15,000,000 payable from revenues of the Enterprise shall have been rendered against the City, which judgments, decrees or orders are not covered by insurance (or, if ostensibly covered by insurance, for which coverage has been denied or disputed by the applicable insurance carrier or carriers), and either (i) enforcement proceedings shall have commenced by any creditor or creditors upon any such uninsured (whether by lack of coverage, denied coverage or disputed coverage) judgments, decrees or orders in excess of \$15,000,000 or (ii) there shall be a period of sixty (60) days or more during which either a stay of enforcement of such judgments, decrees or orders, by reason of a pending appeal or otherwise, shall not be in effect or such judgments, decrees or orders shall not be fully bonded, dismissed, discharged, satisfied or vacated; or

(e) S&P shall have downgraded its rating of any long-term unenhanced Electric Revenue Bonds or Parity Debt that is secured by a lien on and pledge of the Adjusted Net Revenues to below "BBB-" (or its equivalent), or suspended or withdrawn for credit-related reasons its rating of the same; or

(f) the rate setting authority of the City shall be limited in any way that precludes the City from fixing, charging or collecting rates and charges for the use and services of the Enterprise in an amount sufficient to pay its debts as they become due; or

(g) the City shall (i) default in any payment of any obligation (other than the Subordinate Bond or the Obligations) secured by a charge, lien or encumbrance on the Adjusted Net Revenues or Available Electric Revenues that ranks senior to or on a parity with the Obligations ("Secured Debt"), beyond the period of grace, if any, provided in the instrument or agreement under which such Secured Debt was created, or (ii) default in the observance or performance by the City of any agreement or condition relating to any Secured Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which

default or other event or condition is to cause, or to permit the holder or holders of such Secured Debt (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Secured Debt to become due prior to its stated maturity.

(III) The occurrence and continuance of one or more of the following events shall constitute a “Level 3 Event of Default” hereunder:

(a) (i) any representation or warranty made by the City in this Agreement (or incorporated herein by reference) that is not qualified in any way by reference to “material”, “materiality”, “Material Adverse Effect” or similar qualifier, shall prove to have been known to be incorrect or untrue in any material respect or (ii) any representation or warranty made by the City in this Agreement (or incorporated herein by reference) that is qualified in any way by reference to “material”, “materiality”, “Material Adverse Effect” or similar qualifier, shall prove to have been known to be incorrect or untrue in any respect; or

(b) any Indenture Event of Default shall have occurred and be continuing beyond the applicable grace period; or

(c) the City fails to pay, or cause to be paid, when due any Obligation owed to the Bank other than principal of or interest on the Loan or Subordinate Bond and such failure shall continue unremedied for a period of two (2) Business Days after notice thereof; or

(d) default in the due observance or performance by the City of any covenant set forth in Section 5.1(c), 5.4, 5.11, 5.12, 5.13, 5.14, 5.17 or 5.18; or

(e) default in the due observance or performance by the City of any other term, covenant or agreement set forth in (or incorporated by reference in) this Agreement (other than those referred to in Sections 6.1(III)(a), 6.1(III)(b), 6.1(III)(c) and 6.1(III)(d)) and the continuance of such default for thirty (30) days after the occurrence thereof; or

(f) any of the Rating Agencies then rating any unenhanced Electric Revenue Bonds or Parity Debt shall have downgraded for credit-related reasons its long-term unenhanced rating of any Electric Revenue Bonds or Parity Debt to below “Baa2” (or its equivalent), in the case of Moody’s, “BBB” (or its equivalent), in the case of Fitch or “BBB” (or its equivalent), in the case of S&P, or suspended or withdrawn its rating of the same for credit-related reasons.

*Section 6.2. Remedies.* Upon the occurrence and continuance of any Event of Default, the Bank may exercise any one or more of the following rights and remedies:

(a)(i) either personally or by attorney or agent, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under

the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the City under the Related Documents, whether for specific performance of any agreement or covenant of the City or in aid of the execution of any power granted to the Bank in the Related Documents;

(ii) at the expense of the City, cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Bank shall have no obligation to effect such a cure; and

(iii) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents and as otherwise available at law and at equity.

(b) In addition to the remedies set forth in subsection (a) of this Section 6.2, upon the occurrence and only during the continuance of any Level 1 Event of Default, the Bank may, by written notice to the City, declare the outstanding amount of the Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(c) In addition to the remedies set forth in subsection (a) of this Section 6.2, upon the occurrence and only during the continuance of any Level 2 Event of Default, the Bank may, at any time thereafter, commencing not earlier than seven (7) days after the occurrence of such Level 2 Event of Default, by written notice to the City, declare the outstanding amount of the Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue; and

(d) In addition to the remedies set forth in subsection (a) of this Section 6.2, upon the occurrence and during the continuance of any Level 3 Event of Default, the Bank may, at any time thereafter, commencing not earlier than one hundred and eighty (180) days after the occurrence of such Level 3 Event of Default, by written notice to the City, declare the outstanding amount of the Obligations under this Agreement to be due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall thereupon immediately accrue; *provided* that in any event the Bank shall give the City not less than sixty (60) days prior written notice before any such Obligations shall be declared due and payable; and

(e) Notwithstanding the foregoing provisions of this Section 6.2, if any Event of Default under Section 6.1 occurs and (i) any other holder or credit enhancer of Secured Debt or any counterparty under any Swap related thereto causes, as a result thereof, any such Secured Debt or other obligations of the City to become immediately due and payable upon the occurrence of such Event of Default (whether by repurchase, mandatory tender, mandatory redemption, acceleration or otherwise), the Bank may immediately, without notice, avail itself of the remedies set forth in this Section 6.2 hereof and/or declare or cause to be declared the Obligations to be immediately due and payable or

(ii) any other holder or credit enhancer of Secured Debt or any counterparty under any Swap related thereto, as a result thereof, has the right to cause such Secured Debt to be immediately due and payable (whether by repurchase, mandatory tender, mandatory redemption, acceleration or otherwise) on a date earlier than, or pursuant to a notice period which is shorter than what is set forth in subsection (c) or (d) of this Section 6.2, as applicable, in connection with a default related to such Secured Debt, then the Bank shall automatically have such right or shorter notice period, as applicable, with respect to such Event of Default.

## ARTICLE SEVEN

### MISCELLANEOUS

*Section 7.1. Net of Taxes, Etc.* All payments made by the City hereunder and under the Subordinate Bond shall be made without setoff, counter-claim or other defense. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding, except as provided below, any tax imposed on or measured by the overall net income of the Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) under which the Bank is organized) and all interest, penalties or similar liabilities with respect thereto (collectively, "*Taxes*"). If the City shall be required by any law, rule or regulation to deduct any Taxes from or in respect of any sum payable to the Bank under this Agreement or the Subordinate Bond, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions, (iii) the City shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable laws, rules and regulations and (iv) within forty-five (45) days after the date of such payment, the City shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof. In addition, the City agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America, the State of California or the State of New York from any payment made hereunder or under the Subordinate Bond or from the execution or delivery or the performance of this Agreement or the Subordinate Bond (hereinafter referred to as "*Other Taxes*"). The Bank shall provide to the City within a reasonable time a copy of any written notification it receives with respect to Other Taxes owing by the City to the Bank hereunder provided that the Bank's failure to send such notice shall not relieve the City of its obligation to pay such amounts hereunder. The City will to the maximum extent permitted by applicable law indemnify and hold harmless the Bank, and reimburse the Bank upon its written request, for the amount of any Taxes or Other Taxes so levied or imposed and paid by the Bank; *provided*, that the City shall not be obligated to indemnify the Bank for any penalties, interest or other expenses arising from the Bank's negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of all of the Obligations. The City shall not be required to reimburse or indemnify the Bank for any Taxes or Other Taxes pursuant to this Section 7.1

incurred or suffered more than six months prior to the date the Bank notifies the City of its payment of such Taxes or Other Taxes and of the Bank's intention to claim indemnification or reimbursement therefor (except that if the imposition of such Taxes or Other Taxes is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof). If the Bank determines in its sole discretion that it has received a refund of any Taxes or Other Taxes which have been paid by the City or for which it has been indemnified or reimbursed by the City pursuant to this Section, it shall repay to the City an amount equal to such refund (but only to the extent of amounts paid by the City under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Notwithstanding anything to the contrary in this Section 7.1, in no event will the Bank be required to pay any amount to the City pursuant to this paragraph 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 payments, reimbursement payments or indemnification payments giving rise to such refund 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 which it deems confidential) to the City or any other Person; provided, that, any request for payment or reimbursement from the Bank will be accompanied by sufficient evidence such payment or reimbursement is due the Bank.

*Section 7.2. Set Off.* Upon the occurrence and during the continuance of an Event of Default, the Bank may, to the extent permitted by law and not inconsistent with the provisions of the Indenture, at any time and from time to time, without prior notice to the City or any other person (any such prior notice being expressly waived), set off and appropriate and apply, against and on account of, any obligations and liabilities of the City to the Bank arising under this Agreement and the Subordinate Bond, without regard to whether or not the Bank shall have made any demand therefor, any and all deposits (general or special, including but not limited to indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) of revenues of the Enterprise and any other indebtedness at any time held or owing by the Bank to or for the credit or the account of the Enterprise.

*Section 7.3. Liability of Bank.* (a) Neither the Bank nor any Bank-Related Person shall be liable or responsible for: (i) the use which may be made of this Agreement or any amounts made available by the Bank hereunder; or (ii) the validity, sufficiency or genuineness of documents or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged (other than for fraud or forgery by the Bank or its officers or directors).

(b) The City assumes all risks associated with the acceptance by the Bank of documents received from the City by telecommunication and email, it being agreed that the use of telecommunication devices and email is for the benefit of the City and that the Bank assumes no liabilities or risks with respect thereto.

*Section 7.4. Unconditional Obligations.* Subject to Section 2.11 hereof, the obligations of the City under this Agreement shall be absolute, unconditional, irrevocable in accordance with

the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following:

(a) any lack of validity or enforceability of this Agreement or, to the extent permitted by law, any other Related Document;

(b) any amendment or waiver of or any consent to departure from the terms of any Related Documents to which the Bank has not consented in writing;

(c) the existence of any claim, counterclaim, setoff, recoupment, defense or other right which any Person may have at any time against the Bank, the City or any other Person, whether in connection with any Related Document, or any other transaction related thereto, *provided, however,* that nothing herein contained shall prevent the assertion of such claim by separate suit;

(d) any statement or any other document presented other than by the Bank pursuant hereto which the Bank in good faith determines to be valid, sufficient or genuine and which subsequently proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever; and

(e) any other circumstances or happening whatsoever whether or not similar to any of the foregoing.

*Section 7.5. Successors and Assigns.*

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon and inure to the benefit of the City, its successors, transferees and assigns and the Bank and its respective permitted successors, transferees and assigns to the extent provided herein. The City may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. The Bank may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfers interests in its rights under this Agreement, and the Subordinate Bond only in accordance with the provisions of paragraph (b) or (c) of this Section and all applicable federal and state securities laws. The Bank may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. The Bank may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section. Notwithstanding anything herein to the contrary, no transfer of the rights or obligations of the Bank in this Agreement or of the Subordinate Bond or any interest therein shall be made prior to the Conversion Date.

(b) *Sales and Transfers by the Bank to a Bank Transferee.* The Bank may at any time sell or otherwise transfer to one or more transferees all or a portion of the Subordinate Bond to a Person that is (i) an Affiliate of the Bank or (ii) a trust or other custodial arrangement established by the Bank or an Affiliate of the Bank, the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act

of 1933, as amended (the “1933 Act”), or “accredited investors” as defined in Rule 501 of Regulation D under the 1933 Act (each, a “*Purchaser Transferee*”). From and after the date of such sale or transfer, Bank of America, N.A. (and its successors) shall continue to have all of the rights of the Bank hereunder and under the Subordinate Bond and the other Related Documents as if no such transfer or sale had occurred; *provided, however*, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Bank hereunder, (B) the City shall be required to deal only with the Bank with respect to any matters under this Agreement, the Subordinate Bond and the Related Documents and (C) in the case of any sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Bank shall be entitled to enforce the provisions of or exercise any remedies with respect to this Agreement or the Subordinate Bond against the City.

(c) *Sales and Transfers by the Bank to a Non-Bank Transferee.* The Bank (or subsequent owner pursuant to this Section 7.5) may at any time sell or otherwise transfer all or a portion of the Subordinate Bond to one or more transferees which are not Bank Transferees but each of which constitutes (i) a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act and (ii) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this Section 7.5, of not less than \$5,000,000,000 (each a “*Non-Bank Transferee*”) only if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the City, the Fiscal Agent and the Bank (if different than the owner) by such selling owner and Non-Bank Transferee; *provided, however*, that any sale or transfer shall be in a minimum amount of \$250,000 or an integral multiple of \$25,000 in excess thereof, and (B) the Non-Purchaser Transferee shall have delivered to the City, the Fiscal Agent and the selling Bank, an investment letter in substantially the form attached as Exhibit E hereto (an “*Investor Letter*”).

(d) *Participations.* The Bank shall have the right to grant participations in all or a portion of the Bank’s interest in the Subordinate Bond and this Agreement to one or more other banking institutions (a “Participant”); *provided, however*, that (i) no such participation by any such Participant shall in any way affect the obligations of the Bank hereunder, (ii) the City shall be required to deal only with the Bank, with respect to any matters under this Agreement, the Subordinate Bond and the other Related Documents and no such Participant shall be entitled to enforce any provision under any of the foregoing against the City and (iii) no such participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank not granted a participation to such Participant.

(e) *Certain Pledges.* In addition to the rights of the Bank set forth above, the Bank may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Subordinate Bond and this Agreement to secure obligations of the Bank or an Affiliate of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such

pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

(f) *Intent of the Bank.* Subject to the provisions of this Section 7.5 and as described in the Investor Letter of the Bank to be delivered by the Bank to the City on the Closing Date, the Bank hereby acknowledges and agrees that the Subordinate Bond is being acquired by the Bank as evidence of a privately negotiated loan for investment in its own account and not with a present view toward resale, and upon any transfer of all or a portion of the Subordinate Bonds pursuant hereto, shall require that any prospective transferee be subject to the same restrictions on transfer as the Bank under this Section 7.5. In connection with any transfer of the Subordinate Bond or an interest therein, the Bank shall not prepare or furnish, or cause to be prepared or furnished, any disclosure regarding the City or the City's finances without the prior review and written consent of the City, in the City's sole discretion.

*Section 7.6. Survival of this Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall survive the effectiveness of this Agreement and the making of the Loan and shall continue in full force and effect so long as any Obligations shall be outstanding and unpaid. The obligation of the City to reimburse the Bank pursuant to Section 7.1 hereof and Reimbursed Parties pursuant to Section 7.13 hereof shall survive the termination of this Agreement.

*Section 7.7. Modification of this Agreement.* No amendment, modification or waiver of any provision of this Agreement or the Subordinate Bond shall be effective unless the same shall be in writing and signed by the Bank and the City, and no consent to any departure by the City therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in the same, similar or other circumstances.

*Section 7.8. Waiver of Rights by the Bank.* No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Subordinate Bond shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under this Agreement and the Subordinate Bond are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

*Section 7.9. Severability.* In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

*Section 7.10. Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES; *PROVIDED, HOWEVER,* THAT THE AUTHORITY OF

THE CITY TO ENTER INTO THIS AGREEMENT AND THE SUBORDINATE BOND AND ANY OTHER RELATED DOCUMENT AND THE OBLIGATIONS OF THE CITY HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

*Section 7.11. Notices.* All notices hereunder shall be given by United States certified or registered mail or by telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed as follows:

If to the Bank: Bank of America, N.A.  
333 S. Hope Street  
CA9-193-23-04  
Los Angeles, California 90071-1406  
Attention: Jyoti Rathore, Vice President/MCU  
Telephone: 213-621-4971  
Facsimile: 213-457-8927

With a copy to: Bank of America, N.A.  
211 N. Robinson, 2nd Floor  
OK1-100-02-30  
Oklahoma City, Oklahoma 73102  
Attention: Brent Riley, Senior Vice President  
Telephone: 405-230-1717  
Facsimile: 866-681-1873

If to the City, to: City of Santa Clara  
Finance Department  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: Director of Finance  
Telephone: (408) 615-2345  
Facsimile: (408) 243-8687

If to the Fiscal Agent, to: **[insert info]**

or at such other address, facsimile number, email address or telephone number as shall be designated by one party in a written notice to the other parties hereto.

*Section 7.12. Successors and Assigns.* This Agreement shall inure to the benefit of the parties hereto and shall bind each of the parties respective successors and assigns; *provided* that the rights and duties of the City hereunder may not be assigned or transferred (whether by operation of law or otherwise) without the prior written consent of the Bank.

*Section 7.13. Costs and Expenses; Reimbursement.* a) The City shall pay (i) on the Closing Date all reasonable out-of-pocket expenses of the Bank, including reasonable fees and

expenses of counsel to the Bank, in connection with the preparation, negotiation, execution and delivery of this Agreement and the Subordinate Bond, *provided* that the fees of counsel to the Bank shall not exceed \$[\_\_\_\_\_], (ii) at the time any amendment to, waiver or supplement of, or consent respect of, this Agreement or the Subordinate Bond is sought by the City, a minimum fee of \$3,500 plus attorneys' fees and expenses, (iii) all reasonable out-of-pocket expenses of the Bank including reasonable fees and expenses of any counsel retained by the Bank, in connection with any Event of Default, Potential Default or alleged Event of Default or Potential Default and (iv) if any Event of Default occurs, all out-of-pocket expenses incurred by the Bank, including reasonable fees and disbursements of counsel retained in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom. All such fees and expenses shall be paid by the City promptly following receipt by the City of an invoice for such amounts.

(b) To the maximum extent permitted by law, the City agrees to reimburse and hold harmless the Bank and each Bank-Related Person (each, a "*Reimbursed Party*") from and against any and all claims, damages, liabilities, reasonable costs or expenses whatsoever which a Reimbursed Party may incur or be subject to by reason of or in connection with the execution and delivery of and consummation of the transactions contemplated under the Related Documents, including, without limitation, (i) the making of the Loan hereunder and (ii) the use of the proceeds of the Loan; *provided, however*, that the City shall not be required to reimburse the Bank for any claims, damages, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or negligence of the Bank (including without limitation, failure of the Bank to fund the Loan upon the satisfaction of the applicable conditions precedent set forth herein). Nothing in this Section 7.13 is intended to limit the obligations of the City under the Subordinate Bond or of the City to pay the Obligations when due.

(c) The provisions of this Section 7.13 hereof shall survive the termination of this Agreement and the payment in full of the Obligations. The Bank shall notify the City of any amounts which are owed to a Reimbursed Party pursuant to this Section 7.13.

*Section 7.14. Headings.* The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

*Section 7.15. Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument.

*Section 7.16. Entire Agreement.* This Agreement and the Subordinate Bond constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

*Section 7.17. Submission to Jurisdiction; Waiver of Jury Trial.* All litigation arising out of, or related to this Agreement and the Subordinate Bond shall be brought in a state or federal court located in the State of California. The City and the Bank each hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. To the extent

permitted by applicable law, the City and the Bank each hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the Subordinate Bond.

TO THE FULL EXTENT PERMITTED BY LAW, THE CITY AND THE BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SUBORDINATE BOND, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE CITY AND THE BANK FURTHER AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT JURY. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT PERMITTED BY LAW, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE SUBORDINATE BOND. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR THE SUBORDINATE BOND.

IF ANY ACTION OR PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT, THE COURT SHALL, AND IS HEREBY DIRECTED TO, MAKE A GENERAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 TO A REFEREE (WHO SHALL BE A SINGLE ACTIVE OR RETIRED JUDGE) TO HEAR AND DETERMINE ALL OF THE ISSUES IN SUCH ACTION OR PROCEEDING (WHETHER OF FACT OR OF LAW) AND TO REPORT A STATEMENT OF DECISION, *PROVIDED* THAT AT THE OPTION OF ANY PARTY TO SUCH PROCEEDING, ANY SUCH ISSUES PERTAINING TO A “PROVISIONAL REMEDY” AS DEFINED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1281.8 SHALL BE HEARD AND DETERMINED BY THE COURT.

*Section 7.18. USA PATRIOT Act Notice.* The Bank hereby notifies the City 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 City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Act. The City hereby agrees that it shall promptly provide such information upon request by the Bank.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed and delivered by its respective officer thereunto duly authorized as of the date first written above.

CITY OF SANTA CLARA, CALIFORNIA, a chartered  
California municipal corporation

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

Approved as to Form:

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

Attest:

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

BANK OF AMERICA, N.A.

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

**EXHIBIT A**

**DEBT SERVICE SCHEDULE**

## EXHIBIT B

### CONVERSION AGREEMENT

#### TAX-EXEMPT BONDS CONVERSION AGREEMENT

THIS TAX-EXEMPT BONDS CONVERSION AGREEMENT (the “*Agreement*”) is made by and between the City of Santa Clara, municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California (the “*City*”), and Bank of America, N.A. (the “*Bank*”), a national banking association duly organized and existing under the laws of the United States of America.

#### RECITALS

Pursuant to Resolution No. \_\_\_\_\_ of the City adopted on \_\_\_\_\_, 2020 and the Bond Order, Fiscal Agent Agreement and Pricing Certificate of the City dated \_\_\_\_\_, 2020 (the “*Bond Order*”), the City has duly authorized and provided for the issuance of its [**Subordinated Electric Revenue Refunding Bonds, Series 2020-\_\_**] (the “*Original Bonds*”), dated [\_\_\_\_\_, \_\_\_\_], evidencing the indebtedness of the City to the Bank under that certain Loan Agreement, dated as of \_\_\_\_\_, 2020 (the “*Loan Agreement*”), between the City and the Bank.

The Bank is the 100% holder of all outstanding Original Bonds.

The Loan Agreement provides that the Bank and the City may agree to convert the rate at which the Original Bonds bear interest from the initial Taxable Rate to the Tax-Exempt Rate effective on [\_\_\_\_\_, \_\_\_\_] (the “*Conversion Date*”), subject to meeting certain conditions and in accordance with Section 2.2(b) of the Loan Agreement.

The City and the Bank now wish to enter into this Agreement in order to effectuate such conversion to change the interest on the Original Bonds from the Taxable Rate to the Tax-Exempt Rate effective as of the Conversion Date.

The City and the Bank will deliver an executed copy of this Agreement to the Fiscal Agent (as defined in the Loan Agreement) for the Original Bonds in accordance with Section 2.2(b) of the Loan Agreement.

#### AGREEMENT

For and in consideration of the respective promises and mutual covenants and benefits hereinafter set forth, the City and the Bank agree as follows:

SECTION 1. DEFINITIONS, DECLARATIONS, FINDINGS AND DETERMINATIONS.

The definitions, declarations, determinations and findings contained in the recitals to this Agreement are hereby adopted, restated and made a part of the operative provisions hereof. Capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in the Order. The Original Bonds, as modified, will be referred to herein as “Modified Bonds”.

SECTION 2. CONVERSION TO TAX-EXEMPT RATE.

The City and the Bank hereby agree that the interest rate on the Original Bonds will convert to the Tax-Exempt Rate beginning on the Conversion Date, subject to compliance with the conditions set forth in the Loan Agreement, including, particularly, the issuance by Bond Counsel of the opinion described in Section 2.2(b) thereof.

SECTION 3. COMPLIANCE WITH COVENANTS REGARDING TAX EXEMPTION AND FILING OF FORM 8038-G.

(a) The City hereby agrees that the covenants contained in Section 4.02 of the Bond Order shall become operative on the Conversion Date in accordance with Section 4.01 of the Bond Order.

(b) The City agrees to promptly file a Form 8038-G with the Internal Revenue Service in connection with the change of the interest rate on the Original Bonds to a Tax-Exempt Rate, and the deemed reissuance of the Original Bonds, solely for federal tax purposes, as tax-exempt bonds.

SECTION 4. DELIVERY OF AGREEMENT.

Upon compliance with the provisions of the Loan Agreement, the City and the Bank hereby agree to deliver the fully executed copy of this Agreement to the Fiscal Agent appointed by the City under the Bond Order (the “*Fiscal Agent*”). **[Delivery of an executed copy of this Agreement shall serve as written instructions to the Fiscal Agent to execute an Interest Rate Addendum indicating that the Modified Bonds will bear interest at the Tax-Exempt Rate on and after the Conversion Date in accordance with Section 2.2 of the Loan Agreement].**

SECTION 5. MULTIPLE COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original instrument and each will have the force and effect of an original and all of which together constitute, and will be deemed to constitute, one and the same instrument.

SECTION 6. CLOSING DATE.

This Agreement shall become effective upon satisfaction of all of the conditions described in Section 2.2 of the Loan Agreement.

SECTION 7. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 8. SEVERABILITY.

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application hereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Executed in multiple counterparts as of \_\_\_\_\_, 2019.

CITY OF SANTA CLARA, CALIFORNIA, a chartered  
California municipal corporation

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

BANK OF AMERICA, N.A.

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

## EXHIBIT C

### PREPAYMENT FEE CALCULATION

The Prepayment Fee will be equal to the present value (discounted by the Reinvestment Rate) of the difference, if positive, between:

(a) the sum of the interest payments that would have accrued on each Prepaid Installment of principal of the Subordinate Bond at a fixed interest rate for such installment equal to [X] (which is the Taxable Rate), as if the prepayment had not been made, less

(b) the sum of the interest payments that would have accrued on each Prepaid Installment of principal of the Subordinate Bond at a fixed interest rate for such installment equal to the Reinvestment Rate, as if the prepayment had not been made.

The following definitions will apply to the calculation of the prepayment fee:

(i) “*Taxable Rate*” means the interest rate per annum on the Subordinate Bonds. This rate is provided by Bank on the Closing Date and is not subject to future modification.

(ii) “*Reinvestment Rate*” means with respect to each Prepaid Installment of principal of the Subordinate Bond, the Swap Rate on the date the Prepayment Fee is calculated by the Bank for a term corresponding to the period of time remaining until such principal installment was scheduled to be paid, interpolated on a linear basis, if necessary, and

(iii) “*Swap Rate*” means, as of any date, the offered U.S. Dollar interest rate swap rate that a fixed rate receiver would receive in return for paying a floating rate equal to the three-month LIBOR (or a comparable or successor rate that is approved by the Bank and the City) determined on such date by reference to the Bloomberg service or such other similar data source then used by the Bank and acceptable to the City for determining such rate.

**EXHIBIT D**

**FORM OF COMPLIANCE CERTIFICATE**

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

To: Bank of America, N.A.,

Ladies and Gentlemen:

Reference is made to that certain Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (the “*Agreement*”), between the City of Santa Clara (the “*City*”) and Bank of America, N.A. (the “*Bank*”). Unless otherwise defined herein, the terms used in this Certificate shall have the meanings assigned thereto in the Agreement.

The undersigned Authorized City Representative hereby certifies as of the date hereof that he/she is the \_\_\_\_\_ of the City, and that, as such, he/she is authorized to execute and deliver this Certificate to the Bank on the behalf of the City, and that:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. Attached hereto as Schedule 1 are the year-end audited financial statements required by Section 5.1(a) of the Agreement for the fiscal year of the City ended as of the Financial Statement Date indicated date, together with the report and opinion of an independent certified public accountant required by such section.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and

**[select one:]**

**[to the best knowledge of the undersigned no Event of Default has occurred and is continuing.]**

**--or--**

**[the following Event of Default has occurred and is continuing and the action(s) which the City proposed to take with respect thereto are as follows:]** *{if applicable, described details of Event of Default and proposed action}*

Delivery of an executed counterpart of a signature page of this Certificate by fax transmission or other electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Certificate.

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

**[CITY OF SANTA CLARA]**

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

## EXHIBIT E

### FORM OF INVESTOR LETTER

\_\_\_\_\_, 20\_\_

City of Santa Clara  
Finance Department  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: Director of Finance

Re: Subordinated Electric Revenue Refunding Bonds, Series 2020-1

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of all of the above-referenced bonds (the “*Bonds*”), dated their date of issuance. The Bonds were authorized to be issued by the City of Santa Clara (the “*City*”) by Resolution No. \_\_\_ adopted by the City Council on \_\_\_\_\_, 2020 and pursuant to the City Charter, the Procedural Resolution and the Bond Order. Bank of America, N.A. (the “*Purchaser*,” the “*undersigned*,” “*us*” or “*we*,” as applicable) is purchasing the Bonds pursuant to Loan Agreement dated as of [\_\_\_\_], 2020 (the “*Loan Agreement*”), between the City and the Purchaser. All terms used herein and not defined herein shall have the meanings ascribed to such terms in the Loan Agreement. We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Bonds have not been registered pursuant to the Securities Act of 1933, as amended (the “*1933 Act*”), the securities laws of any state nor has the Bond Order or Loan Agreement been qualified pursuant to the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Bonds (i) are not being registered or otherwise qualified for sale under the “blue sky” laws and regulations of any state, (ii) will not be listed on any securities exchange, and (iii) will not carry a rating from any rating service.

2. We have not offered, offered to sell, offered for sale or sold any of the Bonds by means of any form of general solicitation or general advertising, and we are not an underwriter of the Bonds within the meaning of Section 2(11) of the 1933 Act.

3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Bonds.

4. The Purchaser is (i) a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act, and (ii) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date hereof of not less than \$5,000,000,000, and is able to bear the economic risks of such investment.

5. The Purchaser understands that no official statement, prospectus, offering circular, or other offering statement is being provided with respect to the Bonds. The Purchaser has made its own inquiry and analysis with respect to the City, the Bonds and the security therefor, and other material factors affecting the security for and payment of the Bonds.

6. The Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the City, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Bonds and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Bonds.

7. The Bonds are being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; *provided, however*, that the Purchaser reserves the right to sell, transfer or redistribute the Bonds in accordance with applicable securities laws and the terms of the Loan Agreement, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person:

(a) that is an affiliate of the Purchaser;

(b) that is a trust or other custodial arrangement established by the Purchaser or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers or accredited investors;

(c) that is a secured party, custodian or other entity in connection with a pledge by the Purchaser to secure public deposits or other obligations of the Purchaser or one of its affiliates to state or local governmental entities; or

(d) that the Purchaser reasonably believes to be a qualified institutional buyer and commercial bank and who executes an investor letter substantially in the form of this letter.

Very truly yours,

BANK OF AMERICA, N.A.

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

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

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