

## VALLEY CLEAN ENERGY ALLIANCE

### Staff Report – Item 10

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager  
Lisa Limcaco, Director of Finance & Internal Operations  
Chad Rinde, Asst. Chief Financial Officer, Yolo County

**SUBJECT:** Approval of Credit Agreement with River City Bank

**DATE:** April 25, 2018

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#### RECOMMENDATION

Staff recommends the Board adopt a resolution that approves the Credit Agreement with River City Bank contingent upon the City of Woodland approving the Subordination Agreement at their City Council meeting on May 1, 2018.

#### BACKGROUND AND ANALYSIS

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

#### Summary of the Credit Agreement

##### Revolving Line of Credit (RLOC)

- Up to \$11,000,000 RLOC for the sole purpose of providing working capital to fund power purchases during seasonal differences in cash flow and reserves as needed to support power purchases.
- Monthly interest payments due on outstanding RLOC balance at a variable rate of interest equal to the One-Month LIBOR plus 1.75% per annum, subject to a floor of 1.75% per annum. If all of the \$11M were drawn, the monthly payment would be approximately \$33,400, subject to the variable rates.
- Availability of RLOC expires 1 year from execution of agreement (with an option to extend the line for another 6 months for total of 18 months).
- The fees and expenses of the loan are estimated to be \$30,000 and will be paid with proceeds of the line of credit/directly by VCE.

### Conversion of RLOC

- At the expiration of the RLOC, any outstanding balance can be converted to an amortizing Term Loan which matures up to 5 years from conversion date.

### Term Loan

- Up to 60 equal monthly principal payments plus interest on outstanding balance at a fixed rate of interest equal to the 3 year Treasury Constant Maturity Rate plus 2.00% per annum at the time of conversion.
- Required annual Debt service coverage ratio of 1.25:1.

### Other Requirements

- Establish Debt Service Reserve Account of \$1,100,000 which can be funded by RLOC and River City Bank has 1<sup>st</sup> Lien position on this account.
- JPA member loans subordinate to this Credit Agreement.
- Various other loan covenants.

All financial factors associated with the RLOC and subsequent Term Loan have been factored into and are accounted for by the VCE financial model.

The JPA members will consider the Subordination Agreement at their respective member agency meetings in April (City of Davis and Yolo County), and May 2018 (City of Woodland).

VCE's financial and management staff, supported by legal counsel with expertise in financial agreements provided by the office of VCE's General Co-Counsel (BBK), participated in the development and review of the Credit Agreement and associated documents. BBK legal counsel has reviewed and approved the documents as to form.

Staff is recommending the Board approve the Credit agreement with River City Bank as summarized above, and authorize the Board Chair to approve and execute the Credit Agreement, contingent upon all JPA member agencies approving their Subordination Agreements.

### **Attachments**

1. Resolution
2. Credit Agreement

**RESOLUTION \_\_\_\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE  
AUTHORIZING THE EXECUTION AND DELIVERY OF A CREDIT AGREEMENT  
WITH RIVER CITY BANK**

**WHEREAS**, Valley Clean Energy Alliance (“VCEA”), is a public agency formed in January 2017 under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq., between the County of Yolo and the City of Davis to provide Community Choice Energy (CCE) programs within the member agencies, and in June 2017, the City of Woodland also joined VCEA adding to the overall VCEA service territory;

**WHEREAS**, VCEA initially received loans from each member agency of \$500,000, together with co-operative agreements for member agencies to provide contracted staff and supplies during the implementation period, which will continue to June, 2018 when VCEA will begin providing CCE programs; and

**WHEREAS**, VCEA solicited competitive bids for banking and credit services and has selected River City Bank to lend VCEA up to \$11 million as a line of credit to fund power purchases as part of administrating CCE programs, which has a term of 18-months at variable rates and is convertible to a five year term loan with a fixed interest rate; and

**WHEREAS**, River City Bank (the “Bank”) has prepared and presented a Credit Agreement (the “Agreement”) to be between VCEA, as borrower, and the Bank, as lender; and

**WHEREAS**, VCEA has reviewed the terms of the Agreement and desires to fund the administration of the CCE programs in furtherance of its governmental purpose.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of the Valley Clean Energy Alliance as follows:

**Section 1. Findings and Determinations.** The Board hereby finds and determines that the above stated recitals are true and correct.

**Section 2. Approval of Agreement.** The form of Agreement presented at this meeting is hereby approved and the Board Chair and the Interim General Manager are each individually hereby authorized to accept, for and in the name of VCEA, such Agreement with such changes therein as the officer executing the same may approve, in consultation with VCEA’s legal counsel, such approval to be conclusively evidenced by the execution and delivery thereof. This approval is subject to receipt of the executed City of Woodland Subordination Agreement which subordinates the City of Woodland’s loan to VCEA to the River City Bank line of credit given to VCEA.

**Section 3. Official Actions.** The Board Chair, the Interim General Manager, the Treasurer and any and all other officers of VCEA are hereby authorized and directed, for and in the name and on behalf of VCEA, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in connection with the delivery of the Agreement.

**Section 4. Effective Date.** This Resolution shall take effect from and after the date of its passage and adoption.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the Valley Clean Energy Alliance, California, held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Lucas Frerichs, Board Chair

ATTEST: \_\_\_\_\_  
\_\_\_\_\_, Board Secretary

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**CREDIT AGREEMENT**

**Dated as of April \_\_\_, 2018**

**by and between**

**VALLEY CLEAN ENERGY ALLIANCE,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “*Agreement*”) is entered into as of April \_\_, 2018, by and between **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“*Borrower*”), and **RIVER CITY BANK**, a California corporation (“*Lender*”).

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

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a credit facility which includes a revolving line of credit upon and subject to the terms and conditions set forth in this Agreement;

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

#### SECTION 1. DEFINITIONS AND INTERPRETATION.

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

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

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

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

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

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

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

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

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

### *Section 1.3. Accounting Principles.*

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

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

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

## SECTION 2. THE REVOLVING LINE OF CREDIT.

*Section 2.1. Revolving Credit.* Subject to the terms and conditions hereof, Lender agrees to make a revolving credit facility (the “*Revolving Credit*”) available to Borrower for the sole purpose of providing working capital to fund (a) power purchases during seasonal differences in cash flow and (b) reserves as needed to support Power Purchase Agreements in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment at any time prior to the Revolving Credit Termination Date. The Revolving Credit will be disbursed in one or more advances (each, an “*Advance*” and, collectively, the “*Advances*”), provided that the conditions precedent to Advances specified in Section 8 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

*Section 2.2. Advances.* Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that

Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

*Section 2.3. Promissory Note.* The Revolving Credit will be evidenced by a **Revolving Credit Promissory Note** (the "*Promissory Note*") made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B**.

*Section 2.4. Repayment.*

(a) *Revolving Credit Termination Date.* All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the Promissory Note. This is a revolving credit and any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date. Provided no Default or Event of Default has occurred or is occurring, Borrower may request a one-time extension of the Revolving Credit Termination Date for a period of six (6) months by providing a written request to Lender no later than thirty (30) days prior to the Revolving Credit Termination Date. The extension request may be approved or rejected by Lender in its sole discretion. If approved, Lender shall notify Borrower in writing of the extended Revolving Credit Termination Date not later than ten (10) days prior to the initial Revolving Credit Termination Date. Provided no Default or Event of Default has occurred or is occurring, Borrower may also exercise a one-time option to convert the outstanding Advances under the Revolving Credit to a term loan as provided below.

(b) *Conversion of Revolving Advances to a Term Loan.* No later than thirty (30) days prior to the Revolving Credit Termination Date (as may be extended pursuant to Section 2.4(a)), Borrower may notify Lender of its intent to exercise its option to convert, as of a date not later than the Revolving Credit Termination Date, the outstanding Advances under the Revolving Credit to a term loan (the "*Term Loan*") payable in installments of up to sixty (60) equal monthly principal payments plus interest payable monthly in arrears at the Term Loan Rate. The Term Loan shall be governed by the terms and conditions of this Agreement and evidenced by a single promissory note (the "*Term Note*") made, executed and delivered by Borrower in the form (with appropriate insertions) attached hereto as **Exhibit C**.

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

*Section 3.1. Interest Payments.*

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



(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date beginning with the first Payment Date immediately following the initial Advance with all subsequent interest payments due and payable on each Payment Date thereafter. Interest on the Advances will be payable monthly in arrears on each Payment Date. Interest on any installment of principal will be due on a Payment Date provided however, that any principal amount that is not paid when due (whether by lapse of time, acceleration or otherwise) will be due and payable on demand. Borrower will make all payments at the address specified in Section 3.4.

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

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

*Section 3.3. Prepayments.*

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

(b) Mandatory Prepayment. Borrower will, upon demand, prepay Advances at any time and to the extent that the outstanding principal amount of all Advances exceeds the Revolving Credit Commitment.

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

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

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

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

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

#### SECTION 4. FEES.

*Section 4.1.* Upon execution of this Agreement, Borrower shall pay to Lender fees for this Agreement as follows:

(a) Loan Fee. A Loan Fee in an amount equal to .25% of the Revolving Credit Commitment (\$27,500.00).

(b) Documentation Fee. A Documentation Fee in an amount equal to \$2,500.00 for the Revolving Credit Commitment.

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

#### SECTION 5. CONVERSION OF REVOLVING CREDIT ADVANCES TO TERM NOTE.

*Section 5.1. Term Loan.* Provided no Default or Event of Default has occurred or is continuing, Borrower shall have an option to convert outstanding Advances under the Revolving Credit to a Term Loan as provided in Section 2.4(b) herein. The Term Loan will accrue interest at the Applicable Rate from and including the date on which the outstanding Advances are converted to a Term Loan and will be evidenced by the Term Note. Borrower's right to convert outstanding Advances under the Revolving Credit to a Term Loan shall be subject to the execution and delivery of such additional documentation from Borrower and any subordinated creditors as Lender may reasonably require.

SECTION 6. COLLATERAL – REVOLVING CREDIT COMMITMENT.

*Section 6.1. Debt Service Reserve Account.* As a condition to Lender’s obligation to make any Advances under the Revolving Credit Commitment, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the “*Debt Service Reserve Account*”), with a balance of not less than \$1,100,000.00 at any time. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

*Section 6.2. Assignment of Debt Service Reserve Account.* As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in the Debt Service Reserve Account and (i) all replacements, substitutions or proceeds thereof, (ii) all instruments and documents now or hereafter evidencing the Debt Service Reserve Account, (iii) all powers, options, rights, privileges and immunities pertaining to the Debt Service Reserve Account, including the right to make withdrawals therefrom, and (iv) all interest, income, profits and proceeds of the foregoing. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than \$1,100,000.00 after giving effect to such withdrawal, (2) no Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including without limitation, interest) then remaining in the Debt Service Reserve Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys’ fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under that certain Assignment of Deposit Account in the form of **Exhibit D** attached entered into as of the date hereof between Borrower and Lender shall be cumulative.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

*Section 7.1. Organization and Qualification; Authority; Consents.* Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and

adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute the Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any Power Purchase Agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

*Section 7.2. Legal Effect.* This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

*Section 7.3. Subsidiaries.* Borrower has no Subsidiaries.

*Section 7.4. Use of Proceeds.* Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

*Section 7.5. Financial Reports.* Effective with the delivery to Lender of the financial statements required by Section 9.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

*Section 7.6. Full Disclosure.* The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue

statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

*Section 7.7. Litigation.* There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

*Section 7.8. Good Title.* Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

*Section 7.9. Members.* Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

*Section 7.10. Compliance with Laws.* Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 7.11. Other Agreements.* Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 7.12. No Default.* No Default or Event of Default has occurred or is continuing.

## SECTION 8. CONDITIONS PRECEDENT.

The obligation of Lender to make any Advance is subject to the following conditions precedent:

*Section 8.1. All Advances.* As of the time of the making of each Advance (including the initial Advance unless otherwise specified):

(a) each of the representations and warranties set forth in Section 7 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 7.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 9.2 hereof; and

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

*Section 8.2. Initial Advances under the Revolving Credit.*

(a) At or prior to the making of the first Advance under the Revolving Credit Commitment, the following conditions precedent must also be satisfied:

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

- (i) this Agreement;
- (ii) a favorable written legal opinion from Borrower's counsel;
- (iii) the Request for Advance in the form of **Exhibit E**;
- (iv) the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
- (v) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;
- (vi) evidence of Borrower's good standing in the state of California;
- (vii) payment by Borrower of the Loan Fee and all other amounts required to be paid by Borrower pursuant to Sections 4.1 and 11.4(a) of this Agreement;
- (viii) a schedule substantially in the form of **Schedule 1** listing all of Borrower's outstanding Indebtedness for Borrowed Money;
- (ix) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;
- (x) copies of subordinated debt instruments or other evidence of the indebtedness due or to become due from Borrower to the City of Davis, the City of Woodland and/or Yolo County;

- (xi) subordination agreements in favor of Lender in the form attached as **Exhibit F**, executed by each of the City of Davis, the City of Woodland and Yolo County;
- (xii) evidence of operating approval from the CPUC;
- (xiii) summary of the terms of the agreement(s) between Borrower and SMUD pursuant to which SMUD purchases power from third parties on behalf of Borrower (“*Power Purchase Agreements*”);
- (xiv) reserve account control or similar agreement executed by each of Borrower, Lender and SMUD;
- (xv) customer verification information for officers of Borrower and signers of the Loan Documents as Lender may require; and
- (xvi) evidence of Liability Insurance in form and substance satisfactory to Lender.

(2) the Launch Date shall have been established and the initial Advance (other than the advance to fund the Debt Service Reserve Account) under the Revolving Credit requested no earlier than four (4) months prior to the Launch Date;

(3) the Debt Service Reserve Account shall have been established and funded with Lender;

(4) the Advance is either a) the Debt Service Reserve Advance, b) an Advance to make a Power Purchase Payment or c) a Working Capital Advance as provided in Section 8.2(b) below; and

(5) any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

(b) *Permitted Revolving Credit Advances.* In addition to the above-listed conditions precedent, the following terms shall apply to the Advances permitted under the Revolving Credit:

(1) Debt Service Reserve Advance. The Debt Service Reserve Advance shall be in an amount equal to One Million, One Hundred Thousand and no/100 Dollars (\$1,100,000) and will be the first Advance under the Revolving Credit. The proceeds from the Debt Service Reserve Advance shall be deposited into the Debt Service Reserve Account.

(2) PPA Advance. PPA Advances may be requested for the sole purpose of funding reserves in connection with a Power Purchase Agreement. Each PPA Advance shall be requested in substantially the form of **Exhibit E**.

(3) Working Capital Advance. Working Capital Advances may be requested for the sole purpose of bridging seasonal gaps between payment obligations due under the Power Purchase Agreements and reductions in cash flow due to lower billing rates in winter months. Working Capital Advances are to fund power purchases only. Each Working Capital Advance shall be requested in substantially the form of **Exhibit E**.

(4) Pre-Launch Advances. Advances prior to the Launch Date shall be capped at Four Million Dollars (\$4,000,000), of which Five Hundred Thousand Dollars (\$500,000) shall be made by Lender to Borrower to reimburse Borrower for the required deposit made by Borrower to Cal-ISO prior to the execution of this Agreement.

## SECTION 9. COVENANTS.

Borrower agrees that, so long as any credit is available to or in use by Borrower hereunder, except to the extent compliance in any case or cases is waived in writing by Lender:

*Section 9.1. Maintenance of Business.* Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

*Section 9.2. Financial Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, Borrower shall furnish to Lender:

(a) as soon as available, and in any event within thirty (30) days after the close of each month, an unaudited balance sheet of Borrower as of the last day of the period then ended and statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event no later than one hundred twenty (120) days after each Fiscal Year End, a CPA-audited balance sheet of Borrower as of the last day of the Fiscal Year End and CPA-audited statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;



(c) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

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

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

Each of the financial statements furnished to Lender pursuant to this Section 9.2 shall be accompanied by a written certificate signed by the Director of Finance of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

*Section 9.3. Maintenance of Debt Service Reserve Account.* Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 6.

*Section 9.4. Exclusive Depository Relationship.* Borrower shall maintain an exclusive business banking deposit account relationship with Lender for so long as any amounts under this Agreement or any Note remain outstanding. In the event that this condition is not satisfied, as determined by Lender, the Applicable Rate (or the Default Rate, if applicable) and any commissions charge on any outstanding Note will immediately increase by an additional 2.00 percentage points.

*Section 9.5. Debt Service Coverage Ratio.* If the Revolving Credit is converted to the Term Loan, Borrower shall maintain a minimum Debt Service Coverage Ratio ("DSCR") not at any time less than 1.25:1.00, measured annually as of each Fiscal Year End beginning with the first June 30 following conversion to the Term Loan. DSCR is calculated as EBIDA divided by Debt Service.

"EBIDA" is hereby defined as earnings before depreciation, amortization and interest expense, for the twelve (12) month period ending the most recent fiscal year end.

"Debt Service" is hereby defined as interest expense during the calculated period plus current maturities of long term debt reported at the beginning of the calculated period.

*Section 9.6. Unrestricted Tangible Net Assets.* Borrower shall maintain minimum Unrestricted Tangible Net Assets not at any time less than Two Million and 00/100 Dollars (\$2,000,000), measured annually as of June 30, 2019.

"Unrestricted Tangible Net Assets" is defined as total assets less temporarily and permanently restricted assets, less any intangible assets, less total liabilities.

*Section 9.7. Positive Change in Net Assets.* Borrower will show a minimum positive change in Net Assets of no less than One and 00/100 Dollars (\$1.00), measured annually for the twelve month period beginning the first day after Fiscal Year End 2018 through the Fiscal Year End 2019.

“*Net Assets*” is defined as total assets less total liabilities.

*Section 9.8. Minimum Profitability Requirements.* Borrower shall maintain the following minimum “*Profitability*”(defined as revenue minus expenses) for the periods described below:

<b>Calculated Period</b>	<b>Minimum Profitability Requirement</b>
07/01/2018 – 09/30/2018	\$1,700,000
07/01/2018 – 12/31/2018	\$2,900,000
07/01/2018 – 03/31/2019	\$3,000,000
07/01/2018 – 06/30/2019	\$6,100,000
07/01/2019 – 09/30/2019	\$2,500,000

*Section 9.9. Inspection.* Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event no more than six (6) times during any twelve (12) month period if no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

*Section 9.10. Liens.* Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower; provided, however, that the foregoing shall not apply to nor operate to prevent:

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

(b) mechanics’, workmen’s, materialmen’s, landlords’, carriers’, or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are

being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

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

(d) the Liens identified on **Schedule 1** hereto;

(e) the Liens pursuant to an approved Power Purchase Agreement; and

(f) the Liens established by the Loan Documents or otherwise in favor of Lender.

The Liens described in clauses (a) through (f) of this Section 9.10 are collectively referred to in this Agreement as the “*Permitted Liens*.”

*Section 9.11. Investments, Acquisitions, Loans, Advances and Guaranties.* Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

*Section 9.12. Compliance with Laws.* Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

*Section 9.13. Contracts With Members.* Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

*Section 9.14. Notices of Claims and Litigation.* Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower’s financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

*Section 9.15. Other Agreements.* Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

*Section 9.16. Performance.* Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

*Section 9.17. Compliance Certificates.* Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

*Section 9.18. Fiscal Year.* Borrower shall not change its fiscal year without the prior written consent of Lender.

*Section 9.19. Indebtedness for Borrowed Money.* As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money, except as set forth on **Schedule 1**. Except as disclosed on **Schedule 1**, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

*Section 9.20. No Payments on Subordinated Amounts.* So long as any Obligations remain outstanding, Borrower shall not, without the prior written consent of Lender, make any payment on or any distribution with respect to Indebtedness for Borrowed Money to any JPA Member.

## SECTION 10. EVENTS OF DEFAULT AND REMEDIES.

*Section 10.1. Events of Default.* Any one or more of the following will constitute an "Event of Default" hereunder:

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

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

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

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

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

(f) a material adverse change occurs in Borrower's financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired; or

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

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

*Section 10.2. Non-Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in clauses (a) through (g) of Section 10.1, Lender or any permitted holder of the Notes may, by notice to Borrower, take any of the following actions:

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

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

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

*Section 10.3. Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in Section 10.1(h), all Advances and all indebtedness under any Note then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

## SECTION 11. MISCELLANEOUS.

*Section 11.1. Holidays.* If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

*Section 11.2. No Waiver, Cumulative Remedies.* No delay or failure on the part of Lender or on the part of the holder of any Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

*Section 11.3. Amendments, Etc.* No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

### *Section 11.4. Costs and Expenses.*

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 4.1.

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

*Section 11.5. Indemnity.* Whether or not the transactions contemplated hereby shall be consummated, Borrower shall, to the extent permitted by law, indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "*Indemnified Person*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the "*Indemnified Liabilities*"); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

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

The obligations of Borrower in this Section 11.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 11.5 shall be paid within thirty (30) days after demand.

*Section 11.6. Right of Set Off.* To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings,

or some other account) other than the Lockbox Account. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

*Section 11.7. Survival of Representations.* All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

*Section 11.8. Notices.* Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier, email or telecopy) and will be given to the relevant party at its address, email address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device (including electronic mail) capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Valley Clean Energy Alliance  
604 2<sup>nd</sup> Street  
Davis, CA 95616  
Attention: General Manager

To Lender at:

River City Bank  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833  
Telephone: (916) 567-2700  
Telecopy: (916) 567-2780  
Attention: Alice Harris  
Loan Center

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy or email is transmitted to the telecopier number or email address specified in this Section and a confirmation of such telecopy or email has been received by the sender, (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 11.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.



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

*Section 11.9. Headings.* Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

*Section 11.10. Severability of Provisions.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

*Section 11.11. Counterparts.* This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

*Section 11.12. Assignments, Binding Nature, Governing Law, Etc.* This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

*Section 11.13. Submission to Jurisdiction; Waiver of Jury Trial.* Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

*Section 11.14. Time is of the Essence.* Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

*Section 11.15. Consent to Loan Participation.* Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit or the Term Loan to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit and the Term Loan such that Borrower may communicate exclusively with Lender. Lender may provide, without any

limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Notes and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Notes. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

*Section 11.16. No Recourse Against Constituent Members of Borrower.* Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

**[remainder of page intentionally left blank]**

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

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

Valley Clean Energy Alliance

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

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

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

RIVER CITY BANK

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

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

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

## EXHIBIT A

### Definitions

“*Advance*” and “*Advances*” is defined in Section 2.1.

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

“*Applicable Rate*” means (i) for the Revolving Credit, a variable rate of interest equal to the One-Month LIBOR plus 1.75% per annum, subject to a floor of 1.75% per annum, and (ii) for the Term Loan, a fixed rate of interest equal to the 3 year Treasury Constant Maturity Rate plus 2.00% per annum at the time of conversion. The Applicable Rate is subject to increase as provided in Section 9.4.

“*Authorized Representative*” means those persons shown on the list of officers provided by Borrower pursuant to Section 8.2(a)(v), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

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

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

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

“*CAL ISO*” means California ISO, the independent grid operator.

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

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

“*Debt Service*” is defined in Section 9.5.

“*Debt Service Reserve Account*” is defined in Section 6.1.

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

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

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

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

“*EBIDA*” is defined in Section 9.5.

“*Event of Default*” is defined in Section 10.1.

“*Fiscal Year End*” means June 30.

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

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

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

“*Indemnified Liabilities*” is defined in Section 11.5.

“*Indemnified Person*” is defined in Section 11.5.

“*Initial Rate Set Date*” means the date of issuance of the Promissory Note at which time Lender will determine the One-Month LIBOR which shall be in effect until the next Rate Change Date.

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

“*Joint Powers Agreement*” means the Joint Powers Agreement of Borrower effective as of October 25, 2016, and as amended from time to time.

“*Launch Date*” means the earlier of June 4, 2018 and the date on which Borrower begins revenue generation.

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

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

“*Loan Documents*” means this Agreement, the Notes, the Assignment of Debt Service Reserve Account, the Subordination Agreement and all other documents, certificates, instruments and agreements relating to the foregoing or otherwise executed by Borrower in connection with the Revolving Credit.

“*Loan Fee*” means one-quarter of one percent (0.25%) of the Revolving Credit Commitment.

“*Maintenance and Operation Costs*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and a consulting engineer, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

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

“*Net Assets*” is defined in Section 9.7.

“*Notes*” refers collectively to the Promissory Note and, if applicable, the Term Note.

“*Obligations*” means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or

otherwise, including without limitation all interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or payable by Borrower thereunder.

*"One-Month LIBOR"* means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the One-Month LIBOR rate as posted on Bankrate.com (or, if such rate becomes unavailable to Lender, a substitute rate based on an index selected by Lender in its sole discretion) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

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

*"Permitted Liens"* is defined in Section 9.10.

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

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

*"Power Purchase Agreements"* is defined in Section 8.2(a)(i)(xiii).

*"Power Purchase Payment"* means a payment due by Borrower to SMUD pursuant to agreements between Borrower and SMUD relating to Power Purchase Agreements.

*"Profitability"* is defined in Section 9.8.

*"Promissory Note"* is defined in Section 2.3.

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

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

*"Responsible Officer"* means the Chief Executive Officer.

*"Revolving Credit"* is defined in Section 2.1.

*"Revolving Credit Commitment"* means, at any time of determination, an amount equal to \$11,000,000.00 less the aggregate principal amount of Advances made by Lender under the Revolving Credit.

*“Revolving Credit Termination Date”* means the date that is twelve (12) months from the date of this Agreement, subject to one six-month extension as provided in Section 2.4(a).

*“Subordination Agreement”* means a subordination agreement substantially in the form of Exhibit E executed by each member of the Joint Power Authority (“JPA”) which has loaned or otherwise advanced Borrower money affirming the subordination of the loans totaling \$1,500,000 between the JPA Members and Borrower.

*“System”* means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

*“Term Loan”* means the conversion of outstanding Revolving Line of Credit Advances as provided in Section 2.4(b).

*“Term Note”* is defined in Section 2.4(b).

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

*“Unrestricted Tangible Net Assets”* is defined in Section 9.6.

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



## EXHIBIT B

### REVOLVING CREDIT PROMISSORY NOTE

\$11,000,000.00

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

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of ELEVEN MILLION and /100 DOLLARS (\$11,000,000.00), pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of April \_\_, 2018, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Revolving Credit Promissory Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the date of each Advance, or (b) \_\_\_\_\_, 2018, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date. Under Section 5 of the Credit Agreement and subject to the conditions set forth therein, no later than 30 days prior to the Revolving Credit Termination Date, Borrower may request that any Advances outstanding under this Note be converted into a Term Loan evidenced by a Term Note.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

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

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

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

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

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

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

VALLEY CLEAN ENERGY ALLIANCE

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

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

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

## EXHIBIT C

### TERM NOTE

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

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

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of April \_\_\_, 2018, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Term Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Under Section 2.4(b) of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that unpaid Advances under the Revolving Credit be converted to a Term Loan. This Note evidences a Term Loan made to Borrower as of \_\_\_\_\_ [date] in the original principal amount of \$ \_\_\_\_\_, and will bear interest from the date hereof. Borrower agrees to repay this Note by making sixty (60) equal monthly payments of principal hereunder in the amount of \$ \_\_\_\_\_ each, plus all accrued but unpaid interest on the unpaid principal balance of this Note as of each Payment Date, beginning on the first Payment Date after the date of this Note, with all subsequent payments due and payable on each Payment Date thereafter as provided in the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on \_\_\_\_\_ [date – not to exceed 60 months].

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

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

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

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

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

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

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

VALLEY CLEAN ENERGY ALLIANCE

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

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

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

## EXHIBIT D

### ASSIGNMENT OF DEPOSIT ACCOUNT

**Grantor:** Valley Clean Energy Alliance  
23 Russell Blvd.  
Davis, CA 95616

**Lender:** RIVER CITY BANK  
Business Banking Group  
2485 Natomas Park Drive  
Sacramento, CA 95833

**THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated April \_\_\_\_, 2018 is made and executed among Valley Clean Energy Alliance ("Grantor") and RIVER CITY BANK ("Lender").**

**ASSIGNMENT.** For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit account(s) described below, to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**COLLATERAL DESCRIPTION.** The word "Collateral" means the following described deposit account(s) ("Account"):

**A deposit account from Grantor with Lender with reference number \_\_\_\_\_, and all amendments, extensions, renewals, replacements of the accounts (all called the "Debt Service Reserve Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Debt Service Reserve Account, and all proceeds. The Debt Service Reserve Account will at all times maintain the following minimum account balance:**

**Minimum Required Balance:** \$1,100,000.00

together with (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account) other than the Lockbox Account (as defined in the Credit Agreement). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and promises to Lender that:

**Ownership.** Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Right to Grant Security Interest.** Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

**No Prior Assignment.** Grantor has not previously granted a security interest in the Collateral to any other creditor.

**No Further Transfer.** Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

**No Defaults.** There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

**Proceeds.** Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

**Validity; Binding Effect.** This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

**Financing Statements.** Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Collateral. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. Grantor will promptly notify Lender of any change to Grantor's name or its jurisdiction of organization.

**LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL.** While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there is no longer any Indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the applicable rate charged under the Note (as selected by Lender in its sole discretion) from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of such Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**LIMITATIONS ON OBLIGATIONS OF LENDER.** Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

**DEFAULT.** Any Default or Event of Default under the Credit Agreement shall constitute an Event of Default under this Agreement.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

**Accelerate Indebtedness.** Lender may declare all Indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Borrower or Grantor.

**Application of Account Proceeds.** Lender may take directly all funds in the Account and apply them to the Indebtedness. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the Indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the Indebtedness will be paid to Borrower or Grantor as the interests of Borrower or Grantor may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the Indebtedness. Lender also shall have all the rights of a secured party under the California Uniform Commercial Code ("Code"), even if the Account is not otherwise subject to the Code concerning security interests, and the parties to this

Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

**Transfer Title.** Lender may effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

**Other Rights and Remedies.** Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the Code, at law, in equity, or otherwise.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement.

**Remedies Cumulative.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and any election by Lender to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** **This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of California.**

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Sacramento County, State of California.

**Joint and Several Liability.** All obligations of Borrower and Grantor, if they are different, under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and Grantor signing below is responsible for all obligations in this Agreement.

**Preference Payments.** Any monies Lender pays because of an asserted preference claim in Borrower's or Grantor's bankruptcy will become a part of the Indebtedness and, at Lender's option, shall be payable by Borrower and Grantor as provided in this Agreement.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the

granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Power of Attorney.** Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (3) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (4) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

**Waiver of Co-Obligor's Rights.** If more than one person is obligated for the Indebtedness, Grantor irrevocably waives, disclaims and relinquishes all claims against such other person which Grantor has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Code:

**Account.** The word "Account" means the deposit account(s) described in the "Collateral Description" section.



**Agreement.** The word "Agreement" means this Assignment of Deposit Account, as this Assignment of Deposit Account may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

**Borrower.** The word "Borrower" means Valley Clean Energy Alliance and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Credit Agreement.** The words "Credit Agreement" mean the Credit Agreement dated as of April \_\_\_, 2018 between Borrower and Lender, as amended or modified from time to time.

**Default.** The word "Default" means the Default set forth in this Agreement in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means Valley Clean Energy Alliance.

**Indebtedness.** The word "Indebtedness" means all indebtedness of Borrower under the Credit Agreement, the Note or any of the Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or any of the Related Documents.

**Lender.** The word "Lender" means RIVER CITY BANK, its successors and assigns.

**Note.** The word "Note" means any and all Notes (as defined in the Credit Agreement) executed by Borrower in connection with a Revolving Credit or the Term Loan (as defined in the Credit Agreement), together with all renewals, extensions, modifications, consolidations and replacements of such Notes.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**GRANTOR HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED APRIL \_\_\_, 2018.**

**GRANTOR:**

**VALLEY CLEAN ENERGY ALLIANCE**

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

**Its** \_\_\_\_\_

**EXHIBIT E**

**REQUEST FOR ADVANCE**

**\$11,000,000 REVOLVING CREDIT**

**BORROWER: VALLEY CLEAN ENERGY ALLIANCE, HEREBY REQUESTS AN ADVANCE UNDER THE \$11,000,000 REVOLVING CREDIT NOTE IN ACCORDANCE WITH THE CREDIT AGREEMENT.**

**ADVANCE DATE:** \_\_\_\_\_

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

**PURPOSE OF ADVANCE:**

- \_\_\_ - **THIS ADVANCE WILL BE USED TO FUND RESERVES IN ACCORDANCE WITH THE POWER PURCHASE AGREEMENT.**
- \_\_\_ - **THIS IS A WORKING CAPITAL ADVANCE TO COVER THE POWER PURCHASE PAYMENT FOR THE MONTH ENDING \_\_\_\_\_, 201\_\_\_. YOU ARE AUTHORIZED TO DEPOSIT LOAN PROCEEDS INTO CHECKING ACCOUNT: 885413324**
- \_\_\_ - **ATTACHED IS THE INVOICE FOR SUCH POWER PURCHASE PAYMENT**
- \_\_\_ - **YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO THE POWER SUPPLIER AS FOLLOWS:**

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

**WIRE INSTRUCTIONS:**

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

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

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

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

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

**BORROWER CERTIFICATION:**

**BORROWER HEREBY CERTIFIES THAT:**

- (I) **AFTER MAKING THE ADVANCE REQUESTED ON THE ADVANCE DATE ABOVE, THE SUM OF ALL ADVANCES SHALL NOT EXCEED THE REVOLVING COMMITMENTS THEN IN EFFECT;**

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

VALLEY CLEAN ENERGY ALLIANCE

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

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

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

## Exhibit F

### Form of Subordination Agreement

#### SUBORDINATION AGREEMENT

River City Bank (the “*Lender*”) and the other parties signatories hereto (each, a “*Subordinated Creditor*” and collectively, the “*Subordinated Creditors*”), agree, effective April \_\_\_, 2018, as follows:

##### Section 1. Background and Purpose.

1.1 The Lender is making a loan to Valley Clean Energy Alliance, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “*Obligor*”), pursuant to that certain Credit Agreement dated as of the date hereof (as modified, amended, restated or replaced from time to time, the “*Senior Loan Agreement*”). The loan is evidenced by a Revolving Credit Promissory Note in the original principal balance of \$11,000,000, and may be converted to a term loan evidenced by a Term Note (such notes are referred to herein individually and collectively as the “*Senior Note*”), as provided in the Senior Loan Agreement. The Obligor is currently indebted to the Subordinated Creditors as set forth on Schedule 1 attached hereto and incorporated herein (as the same may be amended, modified or refinanced, “*Subordinated Debt*”). The Lender and the Subordinated Creditors desire to enter into this Agreement to effectuate the subordination of the Subordinated Debt to the Senior Debt (as defined below). Capitalized terms used, but not otherwise defined, in this Subordination Agreement shall have the meanings ascribed to them in the Senior Loan Agreement.

##### Section 2. Subordination.

2.1 Each Subordinated Creditor hereby irrevocably subordinates, in accordance with the terms hereof, the payment and performance of the Subordinated Debt by the Obligor to it, to the prior payment and performance in full of all of the obligations specified in the Senior Loan Agreement and the Senior Note (collectively, the “*Senior Debt*”). Each Subordinated Creditor acknowledges that it has been represented by counsel in connection with the transactions that are the subject of this Subordination Agreement. This Subordination Agreement shall be effective as to a Subordinated Creditor when such Subordinated Creditor signs this Subordination Agreement and execution by all Subordinated Creditors is not a condition to such effectiveness.

2.2 Under no circumstances will the Senior Debt be deemed to have been paid in full unless and until such time as, and when used in this Subordination Agreement with respect to the Senior Debt, the words “paid in full,” “payment in full,” and similar phrases shall mean that, the Lender has received payment, in immediately available funds, of 100% of all

outstanding Senior Debt, and all of the Lender's obligations to extend credit under the Senior Loan Agreement have terminated.

2.3 The Subordinated Debt is subordinated in right of payment to the Senior Debt in accordance with this Agreement. Each Subordinated Creditor agrees to make appropriate entries in its books and records and stamp all Subordinated Debt documents evidencing the Subordinated Debt with the following legend:

“The indebtedness evidenced by this instrument is subordinated to the prior payment in full of the Senior Debt (as defined in the Subordination Agreement hereinafter referred to) pursuant to, and to the extent provided in, the Subordination Agreement effective as of April \_\_\_\_, 2018 by the maker hereof and payee named herein in favor of River City Bank.”

### Section 3. Payments.

3.1 Until the payment in full of the Senior Debt, without the prior written consent of the Lender (which consent the Lender may refuse to give for any or no reason), under no circumstances will any Subordinated Creditor, directly or indirectly, take any action to enforce payment of or to collect the whole or any part of the Subordinated Debt or enforce any of the rights and remedies available to the Subordinated Creditor, other than in the manner and to the extent permitted by Section 4 hereof, or ask, demand, take or receive any collateral, mortgages or other security from the Obligor in respect of the Subordinated Debt. Any amounts paid by the Obligor to a Subordinated Creditor in violation of the terms of this Subordination Agreement shall be held by such Subordinated Creditor in trust and promptly paid over to the Lender for application to the Senior Debt in accordance with the Senior Loan Agreement.

3.2 Notwithstanding anything to the contrary contained in this Subordination Agreement, each Subordinated Creditor agrees that it will not, without the Lender's prior written consent (which the Lender may refuse to give for any or no reason), directly or indirectly permit the modification or amendment of any of the terms or provisions, as they exist on the date hereof, of the note reflecting the Subordinated Debt (“*Subordinated Note*”), to the extent that any such modification or amendment would (a) result in any increase in the amount of the Subordinated Debt, (b) increase the amount, or accelerate the due date, of any payment or distribution in respect of the Subordinated Debt.

### Section 4. Allowable Payments.

4.1 Subject to other applicable provisions of this Subordination Agreement, including, without limitation, those contained in Section 5 hereof, without the Lender's prior written consent, the Obligor may not make, and a Subordinated Creditor may not accept from the Obligor, any payment in respect of the Subordinated Debt.

4.2 Notwithstanding anything to the contrary in this Subordination Agreement, the Obligor may set-off against amounts payable in respect of Subordinated Debt under the circumstances set forth or referenced in any documentation of such Subordinated Debt.

Section 5. Readjustment. Each Subordinated Creditor further agrees that, upon any distribution of the assets or readjustment of the indebtedness of the Obligor, whether by reason of liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors, or any other action or proceeding involving the readjustment of all or any of the Subordinated Debt, or the application of the property of the Obligor to the payment or liquidation thereof, the Lender, in any such instance, shall be entitled to receive payment in full of the Senior Debt prior to the payment of all or any part of the Subordinated Debt.

Section 6. Bankruptcy Issues. To the extent that the Obligor makes a payment to the Lender, which payment(s) (or any part thereof) subsequently are voided, invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, receiver, or any other person or entity pursuant to Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 *et seq.*) (the “*Bankruptcy Code*”), any other bankruptcy act, state or federal law, common law or equitable cause (“*Insolvency Law*”), then, to the extent any such payment(s) or proceeds are repaid by the Lender, the Senior Debt (or the part that was intended to be satisfied) will be revived for all purposes of this Subordination Agreement and will continue in full force and effect, as if such payment or proceeds had not been received by the Lender.

Section 7. Waivers. Each Subordinated Creditor hereby waives until the Senior Debt is paid in full any and all rights at law or in equity to subrogation, reimbursement or set off or any other rights which such Subordinated Creditor may have or hereafter acquire against the Obligor in connection with or as a result of such Subordinated Creditor’s execution, delivery and/or performance of this Subordination Agreement.

Section 8. Attorney-In-Fact. Each Subordinated Creditor irrevocably appoints the Lender as its attorney-in-fact, with full power of substitution, in either the Lender’s name or such Subordinated Creditor’s name, to do the following (but the Lender shall have no obligation to do so): (a) endorse and collect all checks, drafts, other payment orders and instruments representing or included in, any payment, dividend or distribution relating to, the Subordinated Debt or any Collateral securing the Subordinated Debt; (b) take any action to enforce, collect or compromise any of the Subordinated Debt; (c) exercise any other right, remedy, privilege or option of such Subordinated Creditor pertaining to any Subordinated Debt or Subordinated Debt documents; (d) take any actions or institute any proceedings that the Lender determines to be necessary or appropriate to collect or preserve the Subordinated Debt or any Collateral for the Subordinated Debt; (e) execute in the name of or otherwise authenticate on behalf of such Subordinated Creditor any record reasonably believed necessary or appropriate by the Lender for compliance with laws, rules or regulations applicable to any Subordinated Debt or any Collateral for the Subordinated Debt, or in connection with exercising the Lender’s rights under this Agreement; and (f) execute and file claims, proofs of claim or other documents, and to take any other action regarding all or any part of the Subordinated Debt necessary or appropriate to insure payment to and receipt by the Lender of all payments, dividends and other distributions on account of the Subordinated Debt, instruments evidencing the Subordinated Debt, or any Collateral for the Subordinated Debt. This appointment is irrevocable and coupled with an interest and shall survive the dissolution or disability of such Subordinated Creditor. Notwithstanding the foregoing, the Lender shall not be liable to any Subordinated Creditor for any failure (i) to prove the existence, amount, or circumstances of the Subordinated Debt; (ii) to exercise any right

related to the Subordinated Debt; or (iii) to collect any sums payable on or distributions attributable to, the Subordinated Debt.

Section 9. Representations and Warranties. Each Subordinated Creditor represents and warrants to the Lender as follows: (a) the execution, delivery and performance of this Agreement and each of the Subordinated Debt documents now outstanding (true and complete copies of which have been furnished to the Lender) have been duly authorized by all necessary action, are within the power and authority of the Subordinated Creditor and do not and will not (i) contravene the articles, charter, bylaws, partnership agreement, operating agreement, regulations or other organic documents, if any, establishing or governing such Subordinated Creditor, any applicable law or governmental regulation or any contractual restriction binding on or affecting such Subordinated Creditor or any of their respective properties, (ii) result in or require the creation of any lien upon or with respect to any of such Subordinated Creditor's properties or (iii) violate the rights of any person or entity; (b) this Agreement and each of the Subordinated Debt documents are legal, valid and binding obligations of such Subordinated Creditor, enforceable against such Subordinated Creditor in accordance with their respective terms except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights and by general equitable principles; (c) there exists no default, event of default, or event which with the passage of time, the giving of notice or both may result in a default or event of default under the Subordinated Debt or any Subordinated Debt documents or any event or occurrence that gives a Subordinated Creditor the right to terminate a commitment, refuse to make an advance, accelerate a maturity with or without notice or the passage of time; and (d) if such Subordinated Creditor is an entity, that entity is and will remain duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation and in good standing in the jurisdictions in which it is doing business. Each Subordinated Creditor further represents and warrants to the Lender as follows: (A) such Subordinated Creditor owns and holds the Subordinated Debt now outstanding free and clear of any lien that has not been disclosed in writing by such Subordinated Creditor to the Lender; (B) such Subordinated Creditor is now solvent, the execution, delivery and performance of this Agreement will benefit such Subordinated Creditor directly or indirectly and such Subordinated Creditor has and will receive fair and reasonably equivalent value for the obligations undertaken in this Agreement; (C) such Subordinated Creditor has (1) without reliance on the Lender or any information received from the Lender and based upon the documents and information such Subordinated Creditor deems appropriate, made an independent investigation of the transactions contemplated by this Agreement and the Borrower, the Borrower's business, assets, operations, prospects and condition, financial or otherwise, and any circumstances that may bear upon those transactions, the Borrower or the obligations and risks undertaken in this Agreement with respect to the Senior Debt; (2) adequate means to obtain from the Borrower on a continuing basis information concerning the Senior Debt and the Lender has no duty to provide to such Subordinated Creditor any information; (3) full and complete access by and through the Borrower to the Lender's loan documents; (4) not relied and will not rely upon any representations or warranties of the Lender not embodied in this Agreement or any acts taken by the Lender (including but not limited to any review by the Lender of the affairs of the Borrower) prior to or after the date of this Agreement; (D) such Subordinated Creditor is the sole holder of the Subordinated Debt with full power to make the subordinations set forth in this Agreement; and (E) such Subordinated Creditor has not made or permitted any assignment or transfer, as security or otherwise, of the Subordinated Debt, any Subordinated Debt documents or

of any of the Collateral securing the Subordinated Debt, and such Subordinated Creditor shall not do so except in favor of the Lender as long as this Agreement remains in effect.

Section 10. Successors and Assigns. This Subordination Agreement immediately shall be binding on each Subordinated Creditor and on its heirs, representatives and assigns, and shall inure to the benefit of the Lender and its successors and assigns. Whenever reference is made in this Subordination Agreement to the Obligor, such term shall include any successor or assign of the Obligor, including, without limitation, a receiver, trustee, or debtor or debtor-in-possession under the Bankruptcy Code.

Section 11. Notices. Any notice required or permitted hereunder shall be given in writing by personal delivery, by overnight delivery through a recognized courier service, by certified U.S. mail, or by telecopier (fax) (i) as to a Subordinated Creditor, by giving such notice to such Subordinated Creditor at the address set forth below such Subordinated Creditor's signature hereon, and (ii) as to the Lender, by giving such notice to the Lender at the address set forth below its signature hereon. All such notices shall be deemed to have been received on the date given, except that any such notice given by overnight delivery will be deemed to have been received on the next business day after such notice was delivered to such a carrier for delivery, and any such notice given by certified U.S. mail will be deemed to have been received three days after such notice was deposited in the U.S. mails, postage prepaid.

Section 12. Governing Law. THIS SUBORDINATION AGREEMENT SHALL BE GOVERNED BY CALIFORNIA LAW (WITHOUT REGARD TO ANY JURISDICTION'S CONFLICT OF LAWS PRINCIPLES). EACH SUBORDINATED CREDITOR AND THE LENDER EACH WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS SUBORDINATION AGREEMENT. This is a "Subordination Agreement" within the meaning of Section 510(a) of the Bankruptcy Code and shall be interpreted and construed accordingly in any proceeding under the Bankruptcy Code.

Section 13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

*[Remainder of this Page Intentionally Left Blank]*



IN WITNESS WHEREOF, the undersigned has caused this Subordination Agreement to be executed as of the Effective Date.

**City of Davis**

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

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

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

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Woodland**

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

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

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

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**County of Yolo**

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

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

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

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

*(Signature Blocks Continue on Following Page)*

**RIVER CITY BANK, as Lender**

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

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

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

Address for notice and service of process:

River City Bank  
2485 Natomas Park Drive, Suite 100  
Sacramento, CA 95833

Attention: \_\_\_\_\_

Fax: (916) \_\_\_\_\_

**Schedule 1**  
**Subordinated Funding Costs**

<u>JPA Member</u>	<u>Amount</u>
City of Davis	\$ 500,000
City of Woodland	\$ 500,000
County of Yolo	<u>\$ 500,000</u>
Total	\$1,500,000

## ACKNOWLEDGMENT

Valley Clean Energy Alliance, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “Company”), acknowledges receipt of a copy of the Subordination Agreement by and between River City Bank (the “Lender”), and the cities, towns and counties parties thereto (each a “Subordinated Creditor”), dated as of April \_\_\_\_, 2018 (as amended from time to time, the “Subordination Agreement”), and agrees that: (a) it will not: (i) except to the extent permitted by the Subordination Agreement, pay any of the Subordinated Debt until the payment in full of the Senior Debt, (ii) provide any security or collateral for any of Subordinated Debt until the payment in full of the Senior Debt, or (iii) take or omit from taking any action that would cause a breach of the Subordination Agreement; (b) neither the Company nor any of its successors or assignees, by operation of law or otherwise, is a party to the Subordination Agreement, and neither the Company nor any of its successors or assignees will have: (i) any right in, or to enforcement of, the Subordination Agreement as against the Lender or a Subordinated Creditor, (ii) any claim of damage if the Lender or a Subordinated Creditor defaults under the Subordination Agreement, or (iii) any right to object to any amendment, modification, or supplement to, or any restatement or replacement of, the Subordination Agreement that is agreed upon by a Subordinated Creditor and the Lender; and (c) none of the provisions of the Subordination Agreement limit or impair the Lender’s rights against the Company or its successors and assigns or any of their respective obligations, indebtedness, or liabilities to the Lender under the Senior Loan Agreement, any related documents, or otherwise.

All capitalized terms used in this Acknowledgment that are defined in the Subordination Agreement and not otherwise defined in this Acknowledgment have the meanings specified in the Subordination Agreement.

IN WITNESS WHEREOF, the Company has executed and delivered this Acknowledgement to the Lender as of the Effective Date.

### **Valley Clean Energy Alliance**

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

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

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

## **EXHIBIT G**

### **DOCUMENT SUMMARY AND NOTICE OF FINAL AGREEMENT**

Borrower has been provided with the following documents issued in connection with the loan evidenced by a Revolving Credit Promissory Note in the original principal balance of \$11,000,000 (the “*Note*”):

Credit Agreement with Exhibits

A – Definitions

B – Form of Revolving Note

C – Form of Term Note

D – Form of Assignment of Deposit Account

E – Form of Request for Advance (RLOC)

F – Form of Subordination Agreement

G – Form of Document Summary and Notice of Final Agreement

And Schedules

1 – Indebtedness for Borrowed Money

Assignment of Deposit Account Agreement

Disbursement Request and Authorization

#### **BORROWER REPRESENTS AND WARRANTS:**

- 1) IT HAS READ, UNDERSTOOD AND AGREES WITH THE TERMS OF EACH DOCUMENT LISTED ABOVE AND THIS AGREEMENT;
- 2) IT CONFIRMS THAT THERE ARE NO CONFLICTS BETWEEN THE TERMS OF THE DOCUMENTS AND ITS UNDERSTANDING OF THE TRANSACTION;
- 3) THE WRITTEN DOCUMENTS ISSUED IN CONNECTION WITH THE LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
- 4) THE WRITTEN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.
- 5) IT HAS HAD AN OPPORTUNITY TO DISCUSS THE LOAN TRANSACTION WITH ITS COUNSEL.

#### **BORROWER:**

Valley Clean Energy Alliance

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

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

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

**Borrower:** Valley Clean Energy Alliance  
23 Russell Blvd.  
Davis, CA 95616

**Lender:** RIVER CITY BANK  
2485 Natomas Park Drive  
Sacramento, CA 95833

## DISBURSEMENT REQUEST AND AUTHORIZATION

**SPECIFIC PURPOSE.** The specific purpose of this loan is to provide working capital and power purchases during times of regular and seasonal cash flow differences.

**DISBURSEMENT INSTRUCTIONS.** Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$11,000,000.00 as follows:

**Other Disbursements:**

\$1,100,000 initial advance to  
fund Debt Service Reserve  
Account

\$4,000,000 amount available Pre-  
Launch to support power  
purchases

\$5,900,000 amounts available  
following Launch date for use in  
accordance with the Credit  
Agreement

**CHARGES PAID IN CASH.** Borrower has paid or will pay in cash as agreed the following charges: \$37,700 in fees and estimated and expenses described below:

\$27,500.00 Loan Fee  
\$2,500.00 Documentation Fee  
\$7,500.00 Estimated Legal Fees  
\$200.00 Estimated Secretary of State and UCC Search Fees

**AUTOMATIC PAYMENTS.** Borrower authorizes Lender to make payments due and payable under the Loan through automatic debit from Borrower's checking account with Lender with the following account number: **8855413325**

**BORROWER:**  
Valley Clean Energy Alliance

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

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

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