

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$XXXXXX

Expiry Date: [Month, Day, Year]

Beneficiary:

City of San José
Attn: Deputy Director of Power Resources
4 N. 2nd St, Ste 700
San José, CA 95113
Ladies and Gentlemen:

By the order of [Developer name and/or Project Name] (“Applicant”), we, [Bank Name] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of City of San José, a California municipal corporation (“Beneficiary”), 4 N. 2nd St, Ste 700, San José, CA 95113, for an amount not to exceed the aggregate sum of U.S. \$XXXXXXXX (XX Million United States Dollars) (“Available Amount”), pursuant to that certain Exclusive Negotiating Agreement for [Energy Storage Agreement/Power Purchase Agreement], dated as of [Month, Day, Year], and as amended, between Applicant and Beneficiary (the “Agreement”). This Letter of Credit shall become effective immediately and shall expire on [Month, Day, Year] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) facsimile to (xxx) xxx-xxxx, or (c) email to xxxxx@yyyy.com, or such other e-mail address as specified from time-to-time by the Issuer. Transmittal by facsimile or email shall be deemed delivered when received. The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile or email) hereunder are to

be directed to Issuer at [*Issuer Address*]. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such Expiration Date, we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

All Issuer charges (including charges for transfers of this Letter of Credit) are for the account of Applicant.

This Letter of Credit shall not be amended except with the written concurrence of Beneficiary, Applicant, and Issuer.

Unless otherwise expressly stated herein, this Letter of Credit is subject to and governed by the rules of the "International Standby Practices 1998", International Chamber of Commerce, Publication No. 590 ("ISP 98"), and as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of California.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*Issuer Address and Contact Information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at xxx-xxx-xxxx and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: City of San José, Attn: Deputy Director of Power Resources, 4 N. 2nd St, Ste 700, San José, CA 95113. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

Ladies and Gentlemen:

The undersigned, a duly authorized representative of City of San José, 4 N. 2nd St, Ste 700, San José, CA 95113, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [Bank Name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are parties to that certain Exclusive Negotiating Agreement, dated as of [Month, Day, Year], and as amended, between Applicant and Beneficiary.
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, because Beneficiary is entitled to draw on and retain such amount pursuant to the Agreement.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in full force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of City of San José and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to City of San José by wire transfer in immediately available funds to the following account:

[Specify account information]

City of San José, a California municipal corporation

[Name and Title of Authorized Representative]

Date _____