Summary Title: Resolution Approving Agreements Related to Letter of Credit with US Bank

Title: Approval of a Resolution Approving and Authorizing the City Manager or Designee to Execute the Continuing Reimbursement Agreement for Letters of Credit With US Bank National Association at an Estimated Cost of $35,000 Per Year, in Connection With the City’s Market Purchase Program Agreement With NCPA, and Authorizing the Execution and Delivery of all Documents Relating to the Letters of Credit

From: City Manager

Lead Department: Utilities

Recommendation
Staff recommends that the City Council approve a resolution (Attachment A) authorizing the City Manager or their designee to execute the Continuing Reimbursement Agreement for Letters of Credit with US Bank National Association with an estimated commitment fee of $35,000 per year, in connection with the City’s Market Purchase Program Agreement with Northern California Power Agency and authorizing the execution and delivery of all documents relating to the Letters of Credit.

Background and Discussion
The City has long utilized services provided by the Northern California Power Agency (NCPA) to effectively manage the City’s electric utility and lower operating costs. In June 2020 the Council authorized the City Manager to execute the Market Purchase Program (MPP) Agreement with NCPA, to further enable the City to utilize NCPA staff and resources to purchase and sell market power, resource adequacy capacity products, and renewable energy credits to support the City’s medium-term electric portfolio planning and trading functions, functions that are currently carried out in-house (Resolution 9866, Staff Report #11086).

To participate in the MPP, NCPA requires the City of Palo Alto to maintain financial reserves at NCPA sufficient to cover the cost of the City’s MPP Agreement transactions for the highest three months of purchases, which is estimated currently at $4 to $8 million. Approval of the attached resolution allows the City to provide a letter of credit to meet its obligation, to be
issued by US Bank National Association (“US Bank”), as described in the Continuing Reimbursement Agreement for Letters of Credit (“the Reimbursement Agreement”, attached as Exhibit A to the resolution). The City will pledge the gross revenues of its electric system towards the City’s payment obligations under the Reimbursement Agreement.

Timeline
Upon approval of the attached resolution, the City anticipates entering into the Reimbursement Agreement by executing it and all related documents, including the Closing and Incumbency Certificate and Irrevocable Standby Letter of Credit, to provide to US Bank, which will then provide the letter of credit to NCPA to permit NCPA to begin transacting under the MPP agreement in October 2020.

Resource Impact
The commitment fee, which is the annual cost of securing the Letter of Credit via the Reimbursement Agreement, is estimated at $35,000 per year, in addition to a one-time initial set up fee of $25,000, which will be paid by the City’s Electric Supply Operations Fund. If the Letter of Credit amount increases above $7 million, the commitment fee would be 0.50% per year.

In Resolution 9866, the City Council authorized the City’s participation in the MPP Agreement until the end of 2040.

Policy Implications
Entering into the Reimbursement Agreement to facilitate the City’s participation in the MPP agreement with NCPA is consistent with the Utilities Department’s Strategic Plan mission statement of “providing safe, reliable, environmentally sustainable, and cost-effective services.”

Stakeholder Engagement
Executing the reimbursement agreement is an administrative task to enable contracting for energy supply through the MPP agreement and hence there was no public engagement in this regard.

Environmental Review
The Council’s adoption of a resolution authorizing the City Manager to execute the Continuing Reimbursement Agreement does not require review under the California Environmental Quality Act, because this action is not a project under section 21065 of Public Resources Code and section 15378(b)(5) of CEQA Guidelines, as an administrative governmental activity which will not cause a direct or indirect physical change in the environment.

Attachments:
- Attachment A: Resolution
Resolution No. __________
Resolution of the Council of the City of Palo Alto Approving and Authorizing the City Manager or Their Designee to Execute the Continuing Reimbursement Agreement for Letters of Credit with US Bank National Association at an Estimated Cost of $35,000 Per Year, in Connection with the City’s Market Purchase Program Agreement with NCPA, and Authorizing the Execution and Delivery of All Documents Relating to the Letters of Credit

RECITALS

A. On June 22, 2020, the Council of the City of Palo Alto Adopted Resolution No. 9866 Approving the Amended and Restated Market Purchase Program Agreement (“MPP Agreement”) with the Northern California Power Agency, Authorizing the City Manager or Their Designee to Authorize NCPA to Purchase and Sell Electricity and Related Products Under the MPP Agreement, and Approving Revisions to the City’s Energy Risk Management Policy to recognize NCPA’s role in carrying out these transactions under the MPP Agreement.

B. In order to participate in the Market Purchase Program, NCPA requires the City of Palo Alto to maintain financial reserves at NCPA sufficient to cover the cost of MPP Agreement transactions for the highest three months of purchases, which is estimated currently at $4 to $8 million.

C. The City wishes to provide a letter of credit to meet this obligation, to be issued by US Bank National Association, as described in the Continuing Reimbursement Agreement for Letters of Credit (“the Reimbursement Agreement”, attached as Exhibit A).

D. The cost of securing the Letter of Credit via the Reimbursement Agreement includes a commitment fee of $35,000 per year for an amount up to $7 million, in addition to a one time initial set up fee of $25,000, which will be paid by the City’s Electric Supply Operations Fund. In Resolution 9866, the City Council authorized the City’s participation in the MPP Agreement until the end of 2040.

NOW THEREFORE, the Council of the City of Palo Alto hereby RESOLVES as follows:

SECTION 1. Each of the above recitals is true and correct and is adopted by the Council of the City of Palo Alto.

SECTION 2. The City is a chartered city and municipal corporation organized and existing under the constitution and laws of the State of California, and is duly empowered as a chartered city to exercise the powers reserved to it under said constitution with respect to municipal affairs.

SECTION 3. As an exercise of such powers, the City has adopted Chapter 12.28 of the Palo Alto Municipal Code (the “Act”) under which, along with the Revenue Bond Law of 1941,
the City Council may, by the adoption of a resolution, provide for the issuance of obligations payable exclusively from enterprise fund revenues for the purpose of providing funds for the acquisition, construction, improving or financing of an enterprise, including any or all expenses incidental thereto or connected therewith.

SECTION 4. Under the Reimbursement Agreement, the City will pledge all revenues, which include all charges received for and all other income and receipts derived by the City from the operation of the City’s Electric System or arising from the Electric System received by the City from the services, facilities, energy and distribution of electric energy by the City, including income from investments, but excluding (a) all reimbursement charges and deposits to secure service and (b) any charges collected by any person to amortize, or otherwise relating to the payment of, the uneconomic portion of costs associated with assets and obligations (“stranded costs”) of the Electric System or of any joint powers agency in which the City participates which the City has dedicated to the payment of obligations other than the Credit, the payment of which obligations will reduce or retire outstanding obligations of the City or any joint powers agency in which the City participates relating to such “stranded costs” to the extent they are the responsibility of the City, (the “Gross Revenues”) to the City’s payment obligations under the Reimbursement Agreement. Said pledge is valid and binding in accordance with the terms the Act and this Resolution, and the Gross Revenues shall immediately be subject to such pledge, and such pledge shall constitute a lien and security interest which shall immediately attach to the Gross Revenues and be effective, binding, and enforceable against the City, its successors, creditors, and all others asserting the rights therein, to the extent set forth in the Reimbursement Agreement, and in accordance with the Act and this Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Notwithstanding anything to the contrary herein, the obligations of the City under the Reimbursement Agreement are payable solely from the Gross Revenues. These obligations shall constitute “Maintenance and Operations Costs” for purposes of the City’s October 1, 2007 Indenture of Trust, relating to the City’s $1,500,000 Electric Utility Clean Renewable Energy Tax Credit Bonds, 2007 Series A (“the 2007 Indenture”), which mature in December 2021 and shall constitute maintenance and operation costs in calculating any net revenues pledged with respect to any future indebtedness of the Electric System.

SECTION 5. Section 5.02 of the 2007 Indenture permits the City to enter into long-term contracts to finance supplies of electric energy, payments which are accounted for as Maintenance and Operations Costs under Section 1.01 of the 2007 Indenture, and which include the City’s costs associated with participating in the MPP Agreement and the Reimbursement Agreement.

SECTION 6. The Reimbursement Agreement is hereby approved for execution by the City Manager or their designee.
SECTION 7. The additional documents related to the Reimbursement Agreement, including the Closing and Incumbency Certificate of the City of Palo Alto, the Irrevocable Standby Letter of Credit, and the City Attorney opinion are hereby approved for execution by the City Manager or their designee, as well as the Director of Utilities, the Director of Administrative Services, and the City Attorney, as applicable, in each case, acting singly (each an “Authorized Officer”).

SECTION 8. The covenants set forth in the Reimbursement Agreement to be executed in accordance with this resolution are hereby approved, shall be deemed to be covenants of the Council of the City, and shall be complied with by the City and its officers.

SECTION 9. Each Authorized Officer and the other officers and staff of the City responsible for the fiscal affairs of the City are hereby authorized and directed to take any actions and execute and deliver any and all documents and certificates as are necessary to accomplish and to consummate the transactions contemplated by the Reimbursement Agreement.

SECTION 10. This resolution shall be effective upon the date of its adoption.
SECTION 11. The Council finds that its authorization of the Reimbursement Agreement and related documents does not constitute a project requiring review under the California Environmental Quality Act (CEQA) or CEQA Guidelines. This action does not meet the definition of a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_________________________  ______________________________
City Clerk      Mayor

APPROVED AS TO FORM:  APPROVED:

__________________________  ______________________________
Assistant City Attorney   City Manager

______________________________
Director of Utilities

______________________________
Director of Administrative Services Department
Continuing Reimbursement Agreement
FOR LETTERS OF CREDIT

This Continuing Reimbursement Agreement for Letters of Credit is made effective this [___] day of August, 2020 by and between U.S. BANK NATIONAL ASSOCIATION ("Bank") and THE CITY OF PALO ALTO ("Applicant").

In consideration of the issuance by Bank or an affiliate of Bank (each such affiliated issuer, an “Other Issuer”) of one or more Credits (as defined below), Applicant agrees that the following terms shall apply to each Application (as defined below) and each Credit issued by Bank or any Other Issuer. With respect to Credits issued by any Other Issuer, such Other Issuer shall have the same rights and obligations under this agreement as Bank.

1. The Credit

   (a) From time to time, Applicant may request Bank to issue (or request one of its subsidiaries or affiliates to issue) one or more letters of credit (each, a “Credit”) substantially in accordance with the terms of any application (each, an “Application”) submitted to Bank by Applicant. All Credits will be deemed irrevocable unless otherwise stated in an Application. Bank may issue any Credit or request any Other Issuer to issue any Credit. Each Credit shall be issued in the sole discretion and at the sole option of Bank. Bank may sell, assign or participate in all or any part of its rights and obligations under this Agreement, the Application and any Credit without the consent of Applicant. Without limiting the foregoing, any Other Issuer may sell a participation in all or any part of its rights and obligations under this Agreement and any Credit to Bank.

   (b) Bank is hereby authorized to set forth in each Credit the terms appearing in the Application, with such modifications as Bank in its discretion may determine are appropriate or necessary and are not materially different from the terms appearing in the Application.

   (c) All communications from Applicant relating to any Credit will be sent at Applicant’s risk. Bank shall have no responsibility for any inaccuracy of translation, or any error or delay in transmission or delivery by mail, telecommunication or any other method outside of Bank’s reasonable control, including all communications made through a correspondent.

   (d) Neither Bank nor its correspondents shall be in any way responsible for the performance of any beneficiary’s obligations to Applicant or for the form, sufficiency, accuracy, genuineness, authority of person signing, falsification or legal effect of any documents required by any Credit if such documents appear in order on their face. Whether documents conform to the terms of any Credit and whether any demand is timely and in proper form shall be independently determined by Bank in its sole discretion, which determination shall be final and binding on Applicant.

   (e) Subject to Section 7(b), Bank may in its discretion honor Applicant’s request to increase the amount of any Credit, extend the time for making and honoring of demands under any Credit and otherwise modify the terms and conditions governing any Credit. In the event of any modification of a Credit at the request or with the consent of Applicant, this Agreement shall be binding upon Applicant with regard to (i) the Credit as modified, (ii) drafts, documents and property covered thereby, (iii) any action taken by Bank or Bank’s correspondents in accordance with such modification, and (iv) any draft paid by Bank or any of Bank’s correspondents which is dated on or before the expiration of any time limit expressed in the Credit, regardless of when drawn or presented for payment and when or whether negotiated, provided the required documents are presented in accordance with the terms of the Credit as amended.

   (f) [Reserved].

   (g) If any Credit’s terms and conditions provide that Bank give the beneficiary a notice of pending expiration, Applicant agrees that it will notify Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which Bank must give such notice of the pending expiration date. In the event Applicant fails to so notify Bank and the Credit is extended, Applicant’s obligations under this Agreement shall continue in effect and be binding upon Applicant with regard to the Credit as so extended.

   (h) Applicant shall promptly review all information, documents and instruments delivered to Applicant from time to time by Bank, including all Credits upon issuance, any amendments, and all related presentations and negotiations, and shall notify Bank within five banking days after receipt if Applicant claims that Bank has failed to comply with Applicant’s instructions or Bank’s obligations with respect to any Credit, has wrongfully honored or dishonored any presentation under any Credit or claims any other irregularity. If Applicant does not so notify Bank within such time period, Applicant shall be conclusively deemed to have waived and shall be precluded from asserting such claim(s).

2. Reimbursement Obligations. Applicant promises to pay Bank on demand, at the address specified in the Application or as otherwise directed by Bank, the following amounts:

   (a) The amount of each draft or other request for payment (hereinafter called a “draft”) drawn under any Credit in accordance with the terms of such Credit. For amounts payable in United States currency, Applicant agrees to reimburse Bank an equivalent amount in (i) United States currency at Bank’s then current selling rate for such foreign currencies. (ii) in such other currency by sending the foreign currency amount due Bank by wire transfer to the account and location designated by Bank, or (iii) in any other currency, place, form and manner agreed to by Bank and Applicant. Upon request, Applicant will pay Bank in advance, in United States currency, all sums necessary for Bank to pay all such drafts upon presentation whether payable in United States currency or otherwise. If the draft is a time draft, Applicant shall make payment without demand sufficiently in advance of its maturity to enable Bank to arrange for funds to reach the place of payment when due.

   (b) Applicant shall pay the Bank a commitment fee with respect to each Credit in an amount equal to either (i) $35,000 per annum for a commitment amount up to and including $7,000,000 or (ii) 0.50% per annum for a commitment amount exceeding $7,000,000 which, shall be payable from time to time at such intervals as Bank may require and shall be nonrefundable, whether or not the Credit is drawn upon, reduced in time.
Continuing Reimbursement Agreement

hereby authorizes Bank to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and under this Agreement from the applicable due date until paid will accrue at a rate equal to the Default Rate. Interest shall be calculated on the basis of a 360-day year and the actual number of days elapsed. Interest accrued hereunder shall be due and payable on the first day of each calendar month.

Without limiting Applicant’s obligations to any Other Issuer, but without duplication, Applicant promises to pay Bank on demand, at the location designated by Bank, an amount equal to all amounts which Bank pays or becomes obligated to pay to any Other Issuer with respect to the Credit, whether as a participant in any Credit or otherwise.

Applicant instructs Bank to automatically deduct from any account of Applicant held by the Bank or any of the Bank’s affiliates all amounts which become due under the Agreement. Applicant will pay all fees on the account which result from the automatic deductions, including any overdraft/NSF charges. If for any reason Bank does not charge the account for any amount due, or if an automatic deduction is reversed, the amount due is still owing to Bank as set forth in this Agreement.

As security for payment of any and all of Applicant’s obligations to Bank and any Other Issuer under this Agreement, any Credit or any other indebtedness of Applicant to Bank and any Other Issuer, Applicant hereby grants Bank a continuous and continuing interest in the Revenue Fund established and held by the Director of Administrative Services pursuant to Section 4.02 of that certain Indenture of Trust, dated as of October 1, 2007 (the “2007 Indenture”), by and between Applicant and U.S. Bank National Association, as trustee, relating to City of Palo Alto $1,500,000 Electric Utility Clean Renewable Energy Tax Credit Bonds, 2007 Series A (the “2007 Bonds”). In addition to all other rights which Bank may have, Applicant hereby authorizes Bank to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Bank to or for the credit or the account of Applicant against any and all of the obligations of Applicant now or hereafter existing under this Agreement, irrespective of whether Bank shall have made any demand under this Agreement and although such deposits, indebtedness or obligations may be unmatured or contingent.

If at any time Bank requires collateral (or additional collateral), Applicant will, on demand, assign and deliver to Bank as security for any and all obligations of Applicant now or hereafter existing under this Agreement collateral of a type and value satisfactory to Bank or make such cash payment as Bank may require and execute, and shall deliver to Bank such security agreements, pledge agreements, or other documents requested by Bank covering such collateral.

Applicant is authorized to file any financing statements and other documents as Bank may require to perfect the security interests granted or contemplated hereunder. At Bank’s request, Applicant will execute or endorse and deliver to Bank such documents, agreements and instruments, and will take or cause to be taken such further actions as may be required by law or which Bank may reasonably request to carry out the terms and conditions of this Agreement and to ensure the perfection and priority of the security interest created or intended hereby, all in form and substance reasonably satisfactory to Bank, and all at the expense of Applicant.

For commercial credits, Applicant shall keep any property described in the Credit adequately covered by insurance satisfactory to Bank, issued by companies satisfactory to Bank, and at Bank’s request will furnish certificates or evidence thereof and will assign insurance policies or certificates to Bank and make losses, adjustments or proceeds payable to Bank. If any such policy procured by Applicant fails to provide for payment of the loss thereunder, Applicant hereby makes the loss payable to Bank under such policy and assigns to Bank all proceeds of such policy and agrees to accept proceeds of all insurance as Bank’s agent and to hold same in trust for Bank, and forthwith to deliver the same to Bank, with Applicant’s endorsement where necessary, and

Bank or any of Bank’s officers are hereby irrevocably empowered, with power of substitution, to endorse any check in the name of Applicant received in payment of any loss or adjustment.

Bank shall not be liable for any failure to collect or demand payment of, or to protest or give any notice of non-payment of, any collateral or any part thereof or for any delay in so doing, nor shall Bank be under any obligation to take any action whatsoever with respect to the collateral or any part thereof. Bank shall use reasonable care in the custody and preservation of the collateral in Bank’s possession but need not take any steps to preserve rights against prior parties or to keep the collateral identifiable. Bank shall have no obligation to comply with any recording, re-recording, filing, re-filing or other legal requirement necessary to establish or maintain the validity, priority or enforceability of, or Bank’s right in and to the, collateral, or any part thereof. Bank may exercise any right of Applicant with respect to any collateral. Bank may endorse Applicant’s name on any and all notes, checks, drafts, bills of exchange, money orders or commercial paper included in the collateral or representing the proceeds thereof.

To secure the payment of Applicant’s obligations hereunder. Applicant hereby pledges and places a lien upon the Gross Revenues of the electrical system of Applicant, comprising all facilities for the generation, transmission and distribution of electric energy (the “Electric System”), Said pledge is valid and binding in accordance with the terms of Chapter 12.28 of the Municipal Code of the City (the “Act”) and Resolution No. of the City Council of the City (the “Resolution”), and the Gross Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Gross Revenues and be effective, binding, and enforceable against the City, its successors, creditors, and all others asserting the rights therein, to the extent set forth in the Reimbursement Agreement, and in accordance with the Act and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Notwithstanding anything to the contrary herein, the obligations of the City under the Reimbursement Agreement are payable solely from the Gross Revenues.
For purposes of this Section, “Gross Revenues” means all revenues, which include all charges received for and all other income and receipts derived by Applicant from the operation of the Electric System or arising from the Electric System received by Applicant from the services, facilities, energy and distribution of electric energy by Applicant, including income from investments, but excluding (a) all reimbursement charges and deposits to secure service and (b) any charges collected by any person to amortize, or otherwise relating to the payment of, the uneconomic portion of costs associated with assets and obligations (“stranded costs”) of the Electric System or of any joint powers agency in which Applicant participates which Applicant has dedicated to the payment of obligations other than the Credit, the payment of which obligations will reduce or retire outstanding obligations of Applicant or any joint powers agency in which Applicant participates relating to such “stranded costs” to the extent they are the responsibility of Applicant.

4. **Default and Remedies.**

(a) Time is of the essence in this Agreement. The occurrence of any of the following shall be an event of default hereunder:

(i) Default in payment or performance of any of Applicant’s obligations hereunder or under any promissory note or other agreement between Bank and Applicant;

(ii) Default under any security documents securing Applicant’s obligations hereunder, whether executed by Applicant or any other person;

(iii) Levy or proceeding against any property of Applicant or any guarantor of Applicant’s obligations hereunder (“Guarantor”);

(iv) Death, dissolution, termination of existence, insolvency or business failure of, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, commencement of any proceeding under any bankruptcy or insolvency laws by or against, or entry of judgment against, Applicant or any Guarantor;

(v) Any warranty, representation or statement made or furnished to Bank by Applicant or any Guarantor proves to have been false in any material respect when made or furnished;

(vi) Any event which gives the holder of any debt obligation of Applicant or any Guarantor the right to accelerate its maturity, whether or not such right is exercised;

(vii) Any guaranty of Applicant’s obligations hereunder ceases to be, or is asserted by any person not to be, in full force and effect;

(viii) Any material adverse change in the financial condition or management of Applicant or any Guarantor;

(ix) Reserved;

(x) Default in payment or performance of Applicant’s obligations or covenants under the 2007 Indenture;

(xi) Non-payment of any debt obligation of Applicant, if such non-payment is not cured within any applicable notice-and-right-to-cure period; or

(xii) The occurrence of a default under other debt agreements/indentures due to Applicant’s draw (and subsequent payment) under a Credit.

(b) Upon the occurrence of any event of default under Section 4(a)(iv), (i) the amount for which all Credits were issued and any other amounts owing hereunder shall immediately become due and payable without any election or action on the part of Bank and (ii) Applicant will be and becomes thereby unconditionally obligated, without any further notice, act or demand, to pay to Bank an amount in immediately available funds equal to 105% of the amount available to be drawn on all Credits then outstanding, which funds shall be held in a special collateral account pursuant to arrangements satisfactory to Bank (the “LC Collateral Account”), in the name of Applicant but under the sole dominion and control of Bank and in which such Applicant shall have no interest.

(c) Upon the occurrence of any other event of default and at any time thereafter, Bank at its option and in addition to all other rights of Bank under this Agreement, any related agreement and applicable law, may (i) without notice or demand declare the amount for which all Credits were issued and any other amounts owing hereunder immediately due and payable, and (ii) make demand on Applicant to pay, and Applicant will, forthwith upon such demand and without any further notice or act pay to Bank an amount in immediately available funds equal to 105% of the amount available to be drawn on all Credits then outstanding, which funds shall be held in the LC Collateral Account.

(d) Bank may at any time or from time to time after funds are deposited in the LC Collateral Account apply such funds to the payment of any amounts owing to Bank hereunder. At any time while any event of default is continuing, neither Applicant nor any person claiming on behalf of or through Applicant shall have any right to withdraw any of the funds held in the LC Collateral Account. After all of the obligations of Applicant under this Agreement have been indefeasibly paid in full, any funds remaining in the LC Collateral Account shall be returned by Bank to Applicant or paid to whomever may be legally entitled thereto at such time. In addition, to the extent Applicant has pledged collateral securing its obligations hereunder, upon the occurrence of any event of default Bank may exercise any and all rights and remedies of a secured party under the Uniform Commercial Code and other applicable law.

(e) Upon the occurrence of an Event of Default, Applicant shall pay a Default Rate in replacement of the Commitment Fee described in Section 2(b). The Default Rate shall be calculated as (i) the Base Rate plus (ii) 3.00%.

(f) The Base Rate shall be calculated as the highest of (i) U.S. Bank Prime Rate plus 2.00%, (ii) Federal Funds Rate plus 3.00%, and (iii) 7.50%.

5. **Representations and Warranties.**

Applicant represents and warrants to Bank the following:
(a) All information, certificates or statements given to Bank in connection with or pursuant to this Agreement are and will be true and complete when given.

(b) This Agreement is the legal, valid and binding obligation of Applicant, enforceable against Applicant in accordance with its terms. The execution, delivery and performance of the Agreement and any Application (i) are within Applicant’s power; (ii) have been duly authorized by all appropriate entity action; (iii) do not require the approval of any governmental agency; and (iv) will not violate any law, agreement or restriction by which Applicant is bound. If Applicant is not an individual, Applicant is an entity duly and properly incorporated or formed, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation or organization, and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted. There is no litigation or administrative proceeding threatened or pending against Applicant which would, if adversely determined, have a material adverse effect on Applicant’s ability or authority to perform its obligations hereunder.

(c) Any Credit, and transactions related thereto, shall be in compliance with any federal, state, local and foreign laws, regulations, treaties or customs applicable to Bank or Applicant.

(d) Applicant will procure promptly all necessary licenses for the export, import, shipping or warehousing of, or payment for property covered by any Credit and will comply with all foreign and U.S. laws, rules and regulations (including exchange control regulations) now or hereafter applicable to the transaction related to any Credit or applicable to the execution, delivery and performance by Applicant of this Agreement.

(e) Applicant and each and all entities 50% or more owned, directly or indirectly, by Applicant (“Subsidiaries”), and their respective officers, employees, directors and agents are and at all times will be in compliance with the following: (A) all laws, rules, and regulations of any jurisdiction applicable to Applicant or its Subsidiaries from time to time concerning or relating to bribery or corruption (“Anti-corruption Laws”), (B) economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government (“Sanctions”), (C) all laws, rules, and regulations of any jurisdiction applicable to the U.S. Department of Treasury’s Office of Foreign Assets Control or successor (“OFAC”) and the U.S. Department of State or successor, and (D) 50% or more owned, directly or indirectly, by any of the above.

(f) The Credits issued hereunder comply with, and neither the Credits issued nor the use of the proceeds of such Credits will violate, any Anti-corruption Laws, Sanctions or Anti-terrorism Laws.

(g) None of Applicant, any Subsidiary or any of their respective directors, officers or employees is (A) listed in any Sanctions-related list of designated persons maintained by OFAC or the U.S. Department of State, (B) operating, organized or resident in a country or territory which is itself the subject or target of any comprehensive Sanctions (“Sanctioned Country”), (C) an agency, political subdivision or instrumentality of the government of a Sanctioned Country, or (D) 50% or more owned, directly or indirectly, by any of the above.

(h) Applicant shall, and shall cause each Subsidiary to, provide such information and take such actions as are reasonably requested by Bank in order to assist Bank in maintaining compliance with Anti-corruption Laws, Sanctions and the PATRIOT Act.

(i) Applicant represents and warrants that granting a security interest in the collateral contemplated by Section 3 hereof will not violate and, is not otherwise prohibited by, indenture agreements of Applicant or any other agreement to which Applicant is a party.

(j) Applicant represents and warrants that no drawing under a Credit (and subsequent demand for repayment by the Bank) would result in any default or cross-default under any of Applicant’s agreements or contracts.

(k) Applicant represents and warrants that reimbursement of draws under a Credit constitute “Maintenance and Operation Costs” for purposes of the 2007 Indenture. Applicant further represents and warrants that reimbursement of draws under a Credit shall constitute maintenance and operation costs in calculating any net revenues pledged with respect to any future indebtedness of the Electric System. Applicant shall not pledge Gross Revenues to secure any future indebtedness of Applicant without the prior written consent of the Bank.

6. Changes to Regulations.

If there shall occur any adoption or implementation of, or change to, any Regulation, or interpretation or administration thereof, which shall have the effect of imposing on Bank (or Bank’s holding company) any increase or expansion of or any new tax (excluding taxes on its overall income and franchise taxes), charge, fee, assessment or deduction of any kind whatsoever, or reserve, capital adequacy, special deposits or similar requirements against credit extended by, and/or against Credits issued by, assets of, deposits with or for the account of Bank or other conditions affecting the extensions of credit and/or issuance of Credits under this Agreement, then Applicant shall pay to Bank such additional amount as Bank deems necessary to compensate Bank for any increased cost to Bank attributable to the extension(s) of credit and/or issuance of Credits under this Agreement and/or for any reduction in the rate of return on Bank’s capital and/or Bank’s revenue attributable to such extension(s) of credit and/or issuance of Credits. As used above, the term “Regulation” shall include any federal, state or international law, governmental or quasi - governmental rule, regulation, policy, guideline or directive (including but not limited to the Dodd -Frank Wall Street Reform and Consumer Protection Act and enactments, issuances or similar pronouncements by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices or any similar authority and any successor thereto) that applies to Bank. Bank’s determination of the additional amount(s) due under this paragraph shall be binding in the absence of manifest error, and such amount(s) shall be payable within 15 days of demand and, if recurring, as otherwise billed by Bank.

7. General Terms and Conditions.

(a) Each Application shall be subject to all terms and conditions of this Agreement. In addition, this Agreement shall apply to each Credit issued by Bank at the request of Applicant, including, without limitation, all Credits (if any) previously opened and outstanding on the date hereof. Notwithstanding the foregoing, if any Credit is issued pursuant to a loan agreement or other separate agreement, then, to the extent of any conflict between such other agreement and this Agreement, the terms of such other agreement shall control.

(b) Notwithstanding any other term hereof, Applicant understands and agrees that any Credit can be revoked or amended only with the consent of the beneficiary of the Credit, Bank and any confirming bank.
Continuing Reimbursement Agreement

(c) If Applicant requests Bank to issue a Credit for the account of a third party, whether affiliated with Applicant or otherwise (the “Account Party”), the Account Party shall have no rights against Bank. Bank may deal with Applicant as if Applicant were the named Account Party.

(d) Applicant shall give Bank prior written notice of any change of name, address, place of business or state of incorporation or organization. Any notice of any nature by Applicant to Bank must be given at the place for notification provided by Bank.

(e) The singular includes the plural. If Applicant consists of more than one person, the obligations of Applicant hereunder are joint and several and are binding upon any marital community of which any Applicant is a member. This Agreement shall be binding on Applicant, its successors and assigns, and shall inure to the benefit of Bank or Bank’s successors, transferees and assignees. Notwithstanding the foregoing, Applicant may not assign its rights under this agreement without Bank’s prior written consent. Any change of control of Applicant shall require Bank’s prior written consent.

(f) Notwithstanding the title appearing on any Credit, the rights and obligations of Bank and Applicant with respect to the Credit shall be as set forth herein.

(g) Any Application or Credit will set forth which rules or customs apply to the corresponding Credit. Such rules and customs may include, but are not limited to, the International Standards and Practice for Documentary Credits, as published by the International Chamber of Commerce (“ISP”) or the Uniform Customs and Practice for Documentary Credits, as published by the International Chamber of Commerce (“UCP”). In any event, the rules or practices set forth in the Credit are incorporated herein and shall govern the Credit. Each Credit shall be governed by the internal laws of the State in the United States of America in which the Credit is issued without regard to such State’s conflict of laws principles (the “Governing Laws”) and the federal laws of the United States of America, except to the extent such laws are inconsistent with the rules adopted in the Application as set forth above. This Agreement shall be governed in accordance with the laws governing the Credit(s) in conjunction with which it is being interpreted. If it is being interpreted independently of any Credit, it shall be governed by the laws of the location of the Bank to which it was delivered.

(h) When possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(i) Applicant hereby indemnifies and agrees to defend and hold harmless Bank, its officers, directors, agents, successors and assigns, from and against any and all liabilities, claims, demands, losses and expenses, arising from or in connection with this Agreement, any Credit or any related transaction. Applicant agrees to pay all reasonable attorney fees and other costs and expenses incurred by Bank in collecting overdue amounts or construing or enforcing any provision of this Agreement or any Credit, including but not limited to reasonable attorney fees at trial, in any arbitration, appellate proceeding, proceeding under the bankruptcy code or receivership and post-judgment attorney fees incurred in enforcing any judgment.

(j) Any action, inaction or omission taken or suffered by Bank or by any of Bank’s correspondents under or in connection with any Credit or any related drafts, documents or property, if in good faith and in conformity with foreign or United States laws, regulations or customs applicable thereto, shall be binding upon Applicant and shall not place Bank or any of Bank’s correspondents under any resulting liability to Applicant. Without limiting the generality of the foregoing, Bank and Bank’s correspondents may act in reliance upon any oral, telephonic, telegraphic, electronic or written request or notice believed in good faith to have been authorized by Applicant, whether or not in fact given or signed by an authorized person.

(k) Bank’s waiver of any right on any occasion shall not be construed as a bar or waiver of such right on any other occasion, or of any other right. Applicant hereby waives and agrees not to assert any defense under any applicable statute of limitations, to the fullest extent permitted by law.

(l) Without notice to any Applicant and without affecting Bank’s rights or Applicant’s obligations, Bank may deal in any manner with any person who at any time is liable for, or provides any collateral for, any obligations of Applicant to Bank. Without limiting the foregoing, Bank may impair, release (with or without substitution of new collateral) and fail to perfect a security interest in, any collateral provided by any person; and sue, fail to sue, agree not to sue, release, and settle or compromise with, any person.

(m) Except as otherwise provided herein or in any Credit, all notices and other communications required or permitted to be given to any party hereto shall be in writing or an electronic medium that is retrievable in a perceivable form and shall be deemed given when delivered by hand, electronically, by overnight courier, or when deposited in the United States mail, postage prepaid, addressed as set forth in the Application.

(n) This Agreement is a continuing agreement and shall remain in effect until terminated, amended or replaced. This Agreement may be terminated by Applicant or Bank by giving notice of termination to the other party and may be amended or replaced by a written agreement signed by Applicant and accepted by Bank. No termination shall alter or affect the undertaking of Applicant or Bank with respect to any Credit already issued, or committed to, prior to such termination. Any amendment or replacement shall supersede this Agreement with respect to Credits already issued or committed to, unless such amendment or replacement states otherwise.

(o) This Agreement, as supplemented by the laws, rules and customs incorporated herein by subpart (g) to this part, and as supplemented by the terms of any Application, constitutes the entire understanding between Bank and Applicant with respect to the matters treated herein, and specifically supersedes any prior or contemporaneous oral agreements.

(p) Bank is authorized, but not obligated, to record electronically or otherwise any telephone and other oral communications between Bank and Applicant. Any telephone number Applicant provides may be used to contact Applicant. By providing a mobile number, Applicant consents to receiving communications at that number that may include prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Bank and our affiliates and agents. These calls and messages may incur access fees from your cellular provider.

(q) All terms and conditions on the attached Schedule 1, and any replacement Schedule 1 are hereby incorporated herein. Applicant may change the provisions of Schedule 1 by executing and delivering a new Schedule 1 to Bank.

(r) In the event Applicant submits an Application or other instruction by facsimile transmission, or by email or other electronic transmission (each, an “Imaged Document”); Applicant agrees: (i) each Imaged Document shall be deemed to be an original document and shall be effective for all purposes as if it were an original; (ii) Applicant shall retain the original of any Imaged Document and shall deliver it to Bank upon request; (iii) if Applicant sends Bank a manually signed confirmation of an Imaged Document, Bank shall have no duty to compare it to the previously received Imaged Document nor shall it have any liability or duty to act should the contents of the written confirmation differ therefrom; (iv) any manually signed confirmation of an Imaged Document must be conspicuously marked “Previously transmitted”, and Bank will not be liable for issuance of duplicate
Credits or amendments thereto that result from Bank’s receipt of confirmations not so marked; and (v) because Bank cannot always determine whether a particular facsimile, email or electronic request is valid, Applicant shall have sole responsibility for the security of using facsimile, email or electronic transmissions and for any authorized or unauthorized Imaged Document received by Bank, purportedly on behalf of Applicant. Notwithstanding the above, Bank is under no obligation to accept any Application or instruction sent by facsimile, email or other electronic transmission.

(s) If Applicant elects to send or receive instructions or reports to or from Bank via unsecured electronic means, including, without limitation, facsimile transmission, voicemail, unsecured e-mail or other unsecured electronic or telephonic methods (“Electronic Transmission”), Applicant acknowledges that such Electronic Transmissions are an inherently insecure communication method due to the possibility of error, delay and observation or receipt by unauthorized personnel. Bank may rely in good faith on Applicant’s instructions regarding how and to what number or e-mail address Electronic Transmissions from Bank should be sent and may rely on any Electronic Transmission that it reasonably believes to have been initiated by the Applicant. Should Applicant elect to send or receive unsecured Electronic Transmissions to or from Bank, Applicant assumes all risks, and Bank shall not be liable for any loss that results from the non-receipt, disclosure, alteration or unauthorized access of any such unsecured Electronic Transmission.

(t) To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Bank will ask each person in a financial transaction their name, address and other information that will allow Bank to identify such person. Bank may also ask to see other documents that substantiate a person’s identity.

(u) This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or portable document format (.pdf) shall be effective as delivery of a manually executed counterpart of this Agreement.

(v) The Applicant shall deliver to the Bank, no later than 180 days after its fiscal year end, annual audited financial statements, in form and substance reasonably satisfactory to the Bank.

(w) The Applicant shall deliver to the Bank a copy of its annual budget, no later than 45 days after its adoption, in form and substance reasonably satisfactory to the Bank.

(x) The Applicant shall deliver to the Bank, no later than 15 days after the end of each calendar month, statements confirming valuation of the collateral on a marked to market basis.

8. Jury Trial Waiver. To the fullest extent permitted by law, Bank and Applicant hereby waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether in tort, contract or otherwise) in any way arising out of, related to or connected with any Credit or this Agreement. Bank and Applicant represent and warrant to each other that this jury trial waiver is knowingly, willingly and voluntarily given.
9. **IMPORTANT NOTICE**: ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING PREPAYMENT OF A DEBT INCLUDING VERBAL PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE.

Applicant acknowledges receipt of a completed copy of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

**APPLICANT:**

THE CITY OF PALO ALTO

By:

Name: Ed Shikada
Title: City Manager

**BANK:**

U.S. BANK NATIONAL ASSOCIATION

By:

Name: 
Title: 

THE CITY OF PALO ALTO

By:

Name: Kiely Nose
Title: Administrative Services Director

THE CITY OF PALO ALTO

By:

Name: Dean Batchelor
Title: Utilities Director

APPROVED AS TO FORM:

THE CITY OF PALO ALTO

By:

Name: Amy Bartell
Title: Assistant City Attorney
SCHEDULE 1

AUTHORIZATION
CONTINUING REIMBURSEMENT AGREEMENT
FOR LETTERS OF CREDIT

The provisions of this Schedule 1 are hereby incorporated into and made a part of the Continuing Reimbursement Agreement for Letters of Credit ("Agreement") executed by and between U.S. BANK NATIONAL ASSOCIATION, ("Bank") and THE CITY OF PALO ALTO ("Applicant"), dated August [___], 2020. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Agreement.

1. In addition to those authorized through U.S. Bank Global Trade or other electronic letter of credit application system offered by Bank, if applicable, any one of the persons whose name, title and signature appears below is authorized to give instructions to Bank and to execute and/or transmit Applications, requests for amendments, requests for extensions and other communications of any nature regarding any Credit issued by Bank for Applicant.

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2. In addition to those authorized through U.S. Bank Global Trade or other electronic letter of credit application system offered by Bank, if applicable, the following persons are entitled to waive discrepancies contained in documents presented under a Credit. (Applicant understands that upon any such waiver, Applicant is obligated to reimburse Bank to the same extent as if the documents fully complied with the terms of the Credit.):

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3. This Schedule 1 shall be effective upon receipt by Bank. Bank may rely on this Schedule I until it has been revoked in writing by Applicant and Bank has a reasonable opportunity to act on any such revocation.

APPLICANT: THE CITY OF PALO ALTO

BANK: U.S. BANK NATIONAL ASSOCIATION

By: ___________________________ By: ___________________________
Name: __________________________ Name: ___________________________
Title: __________________________ Title: ___________________________