

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council

From: Michael Rock, Town Manager 

Date: April 7, 2010

Subject: Adopt a Resolution authorizing the Mayor to execute an MOU with the Marin Energy Authority and a Guaranty and related instruments in connection with a working capital loan in exchange for certain annual payments from the Marin Energy Authority

RECOMMENDATION

Adopt a Resolution authorizing the Mayor to sign an MOU and execute the Guaranty and related instruments in connection with the Town provision of a Guaranty for up to \$100,000 of MEA's working capital loan in exchange for annual payments of \$7,368 for each calendar year or portion thereof in which the Guaranty is in effect.

DISCUSSION

The MEA is a joint powers authority existing under California Government code Section 6500 *et seq.*, whose board is composed of eight elected representatives, one from each member jurisdiction as follows: Belvedere, Fairfax, Mill Valley, San Anselmo, San Rafael, Sausalito, Tiburon, and the County of Marin. The purpose of MEA is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. It is the intent of MEA to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers (collectively, the "MEA Program").

The development and design of the MEA Program has been a deliberate, collaborative process encompassing many years of analysis and preparation. The majority of start-up risks of the program have already been overcome and the Program is now positioned for implementation. However, until MEA is operational and able to produce revenue, it needs to borrow funds for operational costs. MEA has obtained two loans from River City Bank in Sacramento (the "Bank"): one in the amount of \$950,000 for start up costs (the "Start Up Loan"), and the second in the amount of \$500,000 for working capital (the "Working Capital Loan"). The County of Marin has agreed to provide a guaranty for the Start Up Loan, funds from which will be used for ongoing start up costs of the MEA Program.

The Working Capital Loan has a sixteen (16) month term and funds will be used to purchase power in the initial phase of MEA operations to fill the rolling time lag between when MEA purchases energy and when customer revenue is received. MEA has requested that Fairfax execute the Guaranty (Attachment 3) for up to \$100,000 of the Working Capital Loan in exchange for annual payments of \$7,368 for each calendar year or portion thereof in which the Guaranty is in effect. The Guaranty is essentially an agreement that the Town will pay up to \$100,000 to cover any default of MEA under the Working Capital Loan. Thus, there are no expenditures arising from providing the Guaranty unless MEA defaults on loan payments. However, per GASB requirements the Town must maintain a \$100,000 budget reserve item during the term of the Guaranty, which is now sixteen months. In addition to executing the Guaranty, MEA is requesting that the Town enter into a subordination agreement in favor of Shell Energy North America (Attachment 5) which provides that the Town will not seek to recoup funds it pays under the Guaranty, if any, so long as MEA owes Shell Energy for energy and services provided under the February 5, 2010 Master Agreement between MEA and Shell Energy.

Supporting the MEA Program at this stage through implementation of the MOU will result in a one-time risk of budget exposure that seems unlikely to occur. In exchange, the annual payments by MEA seem to compensate the Town well for that risk in light of the present financial climate. Moreover, providing this support will help ensure the success of MEA and consequent recurring budget savings to the Town through reduced and locked in energy costs that will ease pressure on the general fund well into the future. Few, if any, programs are currently available to the Town that can result in such substantial ongoing savings.

FISCAL IMPACT

The Town will receive a payment of \$7,368 for each calendar year or portion thereof in which the Guaranty is in effect. The worse case scenario is if MEA draws on the Working Capital Loan, expends the funds and then defaults, the Town would be obligated to pay the Bank up to \$100,000.

ATTACHMENTS

1. Resolution No.
2. MOU between the Marin Energy Authority and the Town of Fairfax Regarding Loan Guarantee
3. Exhibit A: Revolving Credit Agreement between River City Bank and MEA
4. Exhibit B: Form of Guaranty
5. Subordination Agreement in favor of Shell Energy, North America.

RESOLUTION NO. 10-____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH
THE MARIN ENERGY AUTHORITY AND A GUARANTY AND RELATED INSTRUMENTS IN
CONNECTION WITH A WORKING CAPITAL LOAN IN EXCHANGE FOR CERTAIN ANNUAL
PAYMENTS FROM THE MARIN ENERGY AUTHORITY**

WHEREAS, the Marin Energy Authority (MEA) is a joint powers agency operating under the authority of the Joint Exercise of Powers Act (Government Code sections 6500 et seq.) to form and operate a separate public agency for Community Choice Aggregation (CCA) electric power service, along with other purposes; and

WHEREAS, the Town of Fairfax is a member of MEA, and while under state law and the governing documents of MEA, the Town has no liability for the obligations of MEA, pursuant to Government Code section 6508.1 it may separately contract for, or assume responsibility for, specific debts, liabilities or obligations of MEA after the approval of its governing body without assuming any other debts, obligations or liabilities from the past, present or future operations of the MEA; and

WHEREAS, Fairfax and MEA wish to enter into a memorandum of understanding under which Town would execute (i) a guaranty in favor of River City Bank (the Bank) to guarantee \$100,000 of a \$500,000 loan to MEA for a 16 month loan term and (ii) a subordination agreement in favor of Shell Energy North America (Shell) related to any claims Fairfax may have against MEA as a result of the Guaranty, in exchange for annual payments to Fairfax from MEA in the amount of \$7,368 for each calendar year or portion thereof in which the Guaranty is in effect.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Mayor is hereby authorized to execute the Memorandum of Understanding with MEA, the Guaranty in favor of the Bank and the Subordination Agreement in favor of Shell in substantially the forms presented to the Town Council on April 7, 2010, together with such changes as are approved by the Town Attorney that do not materially affect the obligations of the Town; and
2. The Town Manager is hereby directed to establish such records and reserves related to the Guaranty as are required to satisfy state and GASB requirements and to take such other steps as may be necessary to implement the MOU.

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 7th day of April, 2010, by the following vote, to wit:

AYES: _____

NOES: _____

ABSENT: _____

LEW TREMAINE, MAYOR

Attest:

Judy Anderson, Town Clerk

**Memorandum of Understanding Between the Marin Energy Authority and the
Town of Fairfax Regarding Loan Guaranty**

Whereas, the Marin Energy Authority (MEA) is a joint powers agency formed by the Marin Energy Authority Joint Powers Agreement (MEA JPA) and operating under the authority of the Joint Exercise of Powers Act (Government Code sections 6500 et seq.) to form and operate a separate public agency for Community Choice Aggregation (CCA) electric power service, along with other purposes enumerated in the MEA JPA; and

Whereas, the Town of Fairfax (Fairfax) is a Party to the MEA JPA, and pursuant to section 2.3 of the MEA JPA the debts, liabilities and obligations of the MEA are not the debts, liabilities or obligations of the Parties to the MEA JPA; and

Whereas, for the purposes of this Memorandum of Understanding, Fairfax is acting in its individual capacity as a town; and

Whereas, Fairfax has offered to guarantee \$100,000 of a \$500,000 bank loan to MEA to provide funds for the initiation and operation of the MEA CCA electric service; and

Whereas, the Joint Exercise of Powers Act at Government Code section 6508.1 and Section 2.3 of the MEA JPA permit a party to the joint powers agreement to separately contract for, or assume responsibility for, specific debts, liabilities or obligations of a joint powers agency after the approval of its governing body without assuming any separate debts, obligations or liabilities from the past, present or future operations of the MEA JPA; and

Whereas, the Town of Fairfax Council's action in approving the loan guarantee was made on April 7, 2010 as memorialized below by this Memorandum of Understanding;

Now, therefore the MEA and Fairfax agree as follows:

1. The MEA represents that it has the legal authority under the laws of the State of California to enter into the term loan transaction in the amount of \$500,000 from River City Bank, as evidenced by the Loan Agreement attached hereto as Exhibit A (hereinafter referred to as the River City Loan.)
2. In reliance upon the above representation and agreement, Fairfax will sign the Guaranty in the form attached hereto as Exhibit B. MEA agrees that Fairfax's liability under this agreement is for the specific bank loan guarantee indentified herein only and that Fairfax shall not be liable for any other debts, liabilities or obligations of the MEA as provided by section 2.3 of the MEA JPA.
3. In consideration of the execution of the Guaranty by Fairfax, MEA will pay Fairfax \$7,368 for each calendar year or portion thereof in which the Guaranty is in effect.

4. MEA shall make good faith efforts to pay off or reduce the amount due of the loan prior to its maturity date. In no event shall the Guaranty remain in force and effect for more than sixteen (16) months.
5. In the event of a catastrophic event that causes a fiscal emergency for Fairfax, MEA shall make good faith efforts to make alternative arrangements for security of the loan to enable the Guaranty to terminate.
6. MEA shall indemnify, defend and hold harmless Fairfax from any liability, costs and expenses, including attorneys' fees that arise out of litigation challenging the bank loan transaction or the execution of the Guaranty by Fairfax.

APPROVED BY TOWN OF FAIRFAX

By: _____ Dated: _____
Lew Tremaine, Mayor

APPROVED BY MEA

By: _____ Dated: _____
Dawn Weisz, Interim Executive Director

\$500,000

REVOLVING CREDIT AGREEMENT

Dated as of March 16, 2010

by and between

**MARIN ENERGY AUTHORITY,
as Borrower**

and

**RIVER CITY BANK,
as Lender**

REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT (this "*Agreement*") is entered into as of March 16, 2010 by and between **MARIN ENERGY AUTHORITY**, 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 state-chartered bank ("*Lender*").

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility 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 defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms will be equally applicable to the singular and plural forms of the defined terms.

(b) The Agreement. 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

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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 CREDIT.

Section 2.1. Revolving Credit. Subject to the terms and conditions hereof, Lender agrees to make a revolving loan available to Borrower (the “*Revolving Credit*”) in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment at any time on and after April 16, 2010 and 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 6 are met. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically borrow, prepay in whole or part, and reborrow.

Section 2.2. Advances. Each request for an Advance shall (i) specify the date of the Advance requested (which will be a Business Day at least two (2) Business Days from the date

Lender receives a request); and (ii) specify the amount of such Advance in a Draw Certificate in the form attached hereto as Exhibit B executed by an Authorized Representative of Borrower. Subject to the provisions of Section 6 hereof, the proceeds of each Advance will be transferred to the Borrower Operating Account (as required by Section 7.9) in immediately available funds. 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. Repayment of Principal Amount of Revolving Credit; Revolving Credit Maturity Date. Borrower promises to repay Lender at its address specified in Section 3.4 the aggregate unpaid principal amount of all Advances made to Borrower by Lender in installments, on each Repayment Date in accordance with the amortization schedule set forth on Schedule 2.3 together with any remaining unpaid principal on the Maturity Date. Except as provided in Section 8.2 and 8.3, no principal payments (other than those set forth on Schedule 2.3) with respect to the Advances shall be required prior to the Maturity Date. The Revolving Credit will mature on the Maturity Date.

Section 2.4. The Promissory Note. All Advances made under the Revolving Credit Commitment will be made against and evidenced by a single promissory note of Borrower in the form (with appropriate insertions) attached hereto as Exhibit C (the "Promissory Note") payable to the order of Lender in the face amount of the Revolving Credit Commitment. Notwithstanding the face amount of the Promissory Note, the Promissory Note shall evidence the actual amount of all Advances outstanding under the Revolving Credit Commitment. The Promissory Note will be dated the day of the first Advance under this Agreement and will be expressed to bear interest as set forth in Section 3.

Section 2.5. General Obligation. The Revolving Credit and each Advance are payable from the rate revenues of Borrower which are designated as Pledged Revenues. The Promissory Note and the interest thereon shall be a general obligation of Borrower and, to the extent not paid from Pledged Revenues, shall be paid from any other monies of Borrower lawfully available therefore.

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

Section 3.1. Interest.

(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 herein) 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, until paid in full at the Default Rate. 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. Interest on the Advances will be payable monthly in arrears on the first day of each month and at maturity. Interest on any overdue principal on the Advances (whether by lapse of time, acceleration or otherwise) will be due and payable on demand.

(c) Late Fees. If payment of any principal of, or interest on, the Promissory Note or any other sum payable hereunder or under any other Loan Document is not received within fifteen (15) calendar days after its due date, Lender shall have the right to impose a late charge relative to such payment in an amount equal to up to five percent (5.0%) 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 Obligations will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the interest rate on the Obligations be more than the maximum rate allowed by law (including Government Code Section 53854) or less than five percent (5.0%) per annum.

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 the Promissory Note together with interest accrued thereon, at its option, prior to the Maturity Date (notice of such prepayment having been given pursuant to Section 3.3(d) below), without premium.

(b) Mandatory Prepayment. Borrower shall make a prepayment of the Revolving Credit at any time the portion of the principal amount of all Advances funded hereunder exceeds the Revolving Credit Commitment.

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

(d) Notice. Notice of prepayment of the principal amount of the Promissory Note, together with interest accrued thereon, shall be provided to Lender by Borrower at least one (1) Business Day prior to the date desired for prepayment.

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 Servicing Department
2485 Natomas Park Drive, Suite 400

Sacramento, CA 95833

All payments and collections received in respect of the Obligations and all payments with respect to each Guaranty received, in each instance, by Lender after the occurrence of an Event of Default will be remitted to Lender and distributed as follows:

- (a) *first*, to the payment of any outstanding fees and any reasonable costs and expenses incurred by Lender in monitoring, verifying, protecting, preserving or enforcing rights under this Agreement, the Guaranties or the Promissory Note and in any event including all reasonable costs and expenses of a character which Borrower has agreed to pay under Sections 9.4 or 9.5;
- (b) *second*, to the payment of any accrued but unpaid interest due under the Promissory Note or this Agreement other than for principal;
- (c) *third*, to the payment of the outstanding principal of the Promissory Note;
and
- (d) *fourth*, to Borrower or whoever may be lawfully entitled thereto.

As provided by Section 2.3 of the Shell Security Agreement, Borrower consents to the scheduled amounts reserved in the Shell Primary Secured Account with Lender for the purpose of making the payments described in Section 7.9.

Section 3.5. Notations. All Advances made against the Promissory 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 the Promissory Note and the unpaid principal balance rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce the Promissory Note of the principal amount remaining unpaid, the status of the Advances evidenced by the Promissory Note and the interest rates applicable; *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 the Promissory Note together with accrued interest thereon. Prior to any negotiation of the Promissory Note, Lender will record on a schedule thereto the status of all amounts evidenced by the Promissory Note and the rates of interest applicable thereto.

SECTION 4. GUARANTY, LENDER RESERVE ACCOUNT. CASH COLLATERAL ACCOUNT AND SECURITY.

Section 4.1. Guaranty. The payment and performance of the Obligations with respect to the Revolving Credit will be guaranteed by the Guaranty.

Section 4.2. Lender Reserve Account. In conjunction with the first Advance made hereunder, Borrower shall fund the Lender Reserve Account. Upon the occurrence of an Event of Default hereunder, Lender hereby agrees to (a) first, seek repayment of the Obligations under

the Guaranty, and (b) second, to the extent that there are any remaining Obligations after having been paid under the Guaranty, the Lender Reserve Account will be available to repay Lender for the payment and performance of Obligations. Once all Obligations hereunder are extinguished, all remaining amounts of the Lender Reserve Account will be released to Borrower.

Section 4.3. Borrower Cash Collateral Account. On or prior to the first Advance made hereunder, Borrower shall deposit four hundred thousand dollars (\$400,000) into a segregated and restricted account with Lender (the “Cash Collateral Account”). Upon the occurrence of an Event of Default hereunder, Borrower hereby agrees that amounts in the Cash Collateral Account may be used to satisfy any of the Obligations. Once all Obligations hereunder are extinguished, all remaining amounts of in the Cash Collateral Account will be released to Borrower.

Section 4.4. Security Interest. Borrower hereby grants to Lender a first priority security interest in, upon, and right of set-off against, the proceeds which constitute the Temporary Borrowing Monthly Repayment Amount and the Lender Reserve Account; provided, however, that Lender acknowledges and agrees that Lender shall not have a first lien on any of the “Collateral” described in Section 2 of the Shell Security Agreement. Notwithstanding the foregoing, to the extent that any cash proceeds or monies deposited in the Lender Reserve Account are transferred to the Borrower Operating Account in accordance with the terms of Section 4.2 above, the security interest and lien on such cash proceeds or monies shall be extinguished. Borrower further hereby grants to Lender a first priority security interest, upon, and right of set-off against, the amounts in the Cash Collateral Account.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

Section 5.1. 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 make the borrowings herein provided for, to issue its Promissory Note in evidence thereof and to perform each and all of the matters and things herein and therein provided for; and this Agreement and the other Loan Documents to which it 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. The execution, delivery, performance and observance by Borrower of this Agreement, the other Loan Documents and the other instruments and documents executed by Borrower in connection with this Agreement 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 5.2. 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 5.3. Subsidiaries. Borrower has no Subsidiaries.

Section 5.4. Use of Proceeds . Borrower will use the proceeds of the Advances 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 5.5. Financial Reports. Effective with the delivery to Lender of financial statements required by Section 7.2, 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 accompanied by the audit of independent public accountants, 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. 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 5.6. 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 5.7. 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 5.8. 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 5.9. Members. Borrower is not a party to any contracts or agreements 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 5.10. 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 5.11. 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 5.12. No Default. No Default or Event of Default has occurred or is continuing.

Section 5.13. Fiscal Year. Borrower's fiscal year commences on each April 16 and ends on each April 15.

Section 5.14. Temporary Borrowing Monthly Repayment Amount. The Temporary Borrowing Monthly Repayment Amount applicable to each of the dates set forth in Schedule 2.3 to this Agreement is in excess of the corresponding amount set forth in Schedule 2.3 to this Agreement.

SECTION 6. CONDITIONS PRECEDENT.

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

Section 6.1. 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 5 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 5.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 7.3 hereof;

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement and the Promissory Note, and no Default or Event of Default will have occurred and be continuing; and

(c) Borrower shall have executed and delivered to Lender a complete and accurate Draw Certificate.

The execution and delivery of a Draw Certificate for any Advance pursuant hereto constitutes and will constitute Borrower's warranty as to the foregoing effects.

Section 6.2. Initial Advance. At or prior to the making of the initial Advance, the following conditions precedent shall also be satisfied:

(a) Lender shall have received the following (each to be properly executed and completed) and the same shall have been approved as to form and substance by Lender:

(i) the Promissory Note;

(ii) this Agreement;

(iii) the Guaranty;

(iv) each of the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Officer;

(v) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;

(vi) the opinion of the general counsel of Borrower, dated the Closing Date and addressed to Lender, in form and substance reasonably satisfactory to Lender, with appropriate qualifications, assumptions and limitations;

(vii) the opinion of counsel for Guarantor, dated the Closing Date and addressed to Lender, in form and substance reasonably satisfactory to Lender, with appropriate qualifications, assumptions and limitations;

(viii) copies (executed or 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 and the other Loan Documents to the extent Lender or its counsel may reasonably request; and

(ix) fully executed copies of each of the Shell Agreements.

(b) Borrower shall have (i) paid the Loan Fee and all payments and expenses required to be paid by Borrower pursuant to Section 9.4(a) of this Agreement (ii) deposited four hundred thousand dollars (\$400,000) into the Cash Collateral Account pursuant to Section 4.3 hereof.

(c) 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.

SECTION 7. 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 7.1. 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 7.2. 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, shall furnish to Lender:

(a) as soon as available, and in any event within forty-five (45) days after the close of each quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the 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 within six (6) months after the close of each annual accounting period of Borrower, a copy of the audited balance sheet of Borrower as of the last day of the period then ended and the 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 auditing 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 effect 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 after the request therefore, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (b) of this Section shall be accompanied by a written certificate in the form attached hereto as Exhibit E signed by the chief financial officer 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 7.3. 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 so long as 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 each 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 7.4. Indebtedness for Borrowed Money. Except as otherwise disclosed on Schedule 7.4 attached hereto, 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 7.5. Liens. Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower or any Subsidiary; *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 \$100,000 at any one time outstanding; and

(d) the Liens of Shell Energy through the Shell Security Agreement and Shell Collateral Account Agreements.

The Liens described in clauses (a) through (d) of this Section 7.5 are collectively referred to in this Agreement as the "*Permitted Liens.*"

Section 7.6. 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 7.7. 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 7.8. Burdensome 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 7.9. Maintenance of Primary Deposit Account With Lender. Borrower shall maintain its primary deposit account (the "*Borrower Operating Account*") with Lender, and shall ensure that the Shell Security Agreement contains a provision providing for the monthly payment of the Temporary Borrowing Monthly Repayment Amount from the Shell Primary Secured Account to Lender.

Section 7.10. Notices of Claims and Litigation. Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower's financial condition, (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or Guarantor which could materially affect the financial condition of Borrower or the financial condition of Guarantor and (c) any breach or alleged breach by Borrower of any material term of any Shell Agreement.

Section 7.11. Insurance. Borrower shall maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's Properties and operations, in form, amounts, coverages and with insurance companies reasonably acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person.

Section 7.12. Insurance Reports. Borrower shall furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy.

Section 7.13. 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 and notify Lender immediately in writing of any default in connection with any other such agreements.

Section 7.14. Performance. Borrower shall perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Promissory Note and in all

other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Section 7.15. 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 7.16. Maintenance of Revenues in Excess of Expenditures. Borrower shall maintain revenues in excess of expenditures for each fiscal year, beginning with Borrower's fiscal year ending April 15, 2011. Compliance with this covenant shall be determined as of the date on which Borrower submits its audited annual financial statements to Lender pursuant to Section 7.2.

Section 7.17. Promissory Note Payable from Revenues in Same Fiscal Year. Borrower shall make payments on the Promissory Note only from revenue received or accrued during the fiscal year of Borrower in which the Promissory Note is issued.

Section 7.18. Pledge of Revenues. Borrower shall pledge the Pledged Revenues to the payment of the Promissory Note and the interest thereon, except, however, that no moneys which, when received by the Borrower, will be encumbered for a special purpose may be pledged for the payment of the Promissory Note or the interest thereon unless an equivalent amount of the proceeds from the Promissory Note is set aside for and used for said special purpose.

Section 7.19. Shell Agreements. Borrower shall not agree or otherwise consent to any amend, modification or restatement of any of the Shell Agreements (including (a) any reduction in the Temporary Borrowing Monthly Repayment Amount (as defined in the Shell Security Agreement) or (b) any change to the definitions in the Shell Security Agreement of the terms "Lender Reserve Account", "Secured Account Agreement(s)" or "Primary Secured Account") if such amendment, modification or restatement would adversely impact Lender unless Borrower has received the prior written consent of Lender.

Section 7.20. Fiscal Year. Borrower shall not change its fiscal year without the prior written consent of Lender.

SECTION 8. EVENTS OF DEFAULT AND REMEDIES.

Section 8.1. Events of Default. Any one or more of the following will constitute an "Event of Default" hereunder:

- (a) default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any principal on the Promissory Note payable by Borrower hereunder, (ii) any accrued interest on the Promissory Note within five (5) days when due and payable by Borrower hereunder or under any other Loan Document or (iii) any other Obligation within five (5) days when due and payable by Borrower; or

(b) default in the observance or performance of any provision hereof or any other Loan Document or any Shell Agreement which is not remedied within fifteen (15) days after written notice thereof to Borrower by Lender; or

(c) 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 (including but not limited to Draw Certificates), proves untrue in any material respect as of the date of the issuance or making thereof; or

(d) any event occurs or condition exists (other than those described in clauses (a) through (c) 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 cease 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

(e) any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$100,000 is entered or filed against Borrower or against any of its Properties and remains unvacated, unbonded or unstayed for a period of thirty (30) days; or

(f) Borrower or Guarantor 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 or Guarantor's property or Borrower's ability to repay the Obligations or Borrower's or Guarantor's ability to perform their respective obligations under this Agreement and the Guaranty or any of the other Loan Documents; or

(g) 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

(h) Borrower (i) takes any steps to effect a Winding-Up, (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due, or (iii) fails to contest in good faith any appointment or proceeding described in Section 8.1(k); or

(i) a custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed for Borrower or any substantial part of any of its Properties, 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) days.

Section 8.2. Non-Insolvency Default Remedies. When any Event of Default described in clauses (a) through (g) of Section 8.1 has occurred and is continuing, Lender or any permitted holder of the Promissory Note may, by notice to Borrower, take either or both of the following actions:

(a) terminate the obligation of Lender 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; and

(b) declare the principal of and the accrued interest on the Promissory Note then outstanding to be forthwith due and payable and thereupon the Promissory Note, including both principal and interest and all fees, charges and other amounts payable hereunder and under the other Loan Documents, will be and become immediately due and payable without further demand, presentment, protest or notice of any kind.

Section 8.3. Insolvency Default Remedies. When any Event of Default described in clauses (h) or (i) of Section 8.1 has occurred and is continuing, then the Promissory Note, including both principal and interest and all fees and charges payable hereunder and under the other Loan Documents, will immediately become due and payable without presentment, demand, protest or notice of any kind, and the obligation of Lender to extend further credit pursuant to any of the terms hereof will immediately terminate.

SECTION 9. MISCELLANEOUS.

Section 9.1. 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 9.2. No Waiver, Cumulative Remedies. No delay or failure on the part of Lender or on the part of the holder of the Promissory 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. The rights and remedies hereunder of Lender and of the holder of the Promissory 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, and Borrower irrevocably

waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 9.3. 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 9.4. Costs and Expenses.

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender (including the reasonable fees, charges and disbursements of counsel for 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, a \$1,000 documentation fee.

(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 the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder or in connection with 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 9.5 Indemnity. Whether or not the transactions contemplated hereby shall be consummated, Borrower shall 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):

(a) of any kind or nature whatsoever with respect 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

(b) which 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 in this Section 9.5 shall survive payment 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 Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 9.5 shall be paid within thirty (30) days after demand.

Section 9.6. 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 9.7. Notices. Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier or telecopy) and will be given to the relevant party at its 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 capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Marin Energy Authority
3501 Civic Center Drive, Room 308
San Rafael, CA 94903
Telephone: (415) 507-3813
Telecopy: (415) 499-7880
Attention: Executive Director

To Lender at:

River City Bank
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833
Telephone: (916) 567-2700
Telecopy: (916) 567-2779
Attention: Janice Mosley
Loan Servicing Department

With a copy (not constituting notice) to:

Boutin Gibson Di Giusto Hodell Inc.
555 Capitol Mall, Suite 1500
Sacramento, CA 95814
Telephone: (916) 321-4444
Telecopy: (916) 558-6210
Attention: Iain Mickle, Esq.

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy is transmitted to the telecopier number specified in this Section and a confirmation of such telecopy 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; *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 9.8. 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 9.9. 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 9.10. 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 9.11. 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 the Promissory 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 9.12. 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 and Lender each hereby irrevocably waive 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 9.13. Time is of the Essence. Time is of the essence in the enforcement of this Agreement.

Section 9.14. 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 Loan to one or more purchasers, whether related or unrelated to 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 Promissory Note 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 Promissory Note. 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 9.15. 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 solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Promissory Note. Lender shall have no rights and shall not make any claims, take any

actions or assert any remedies against any of Borrower's constituent members in connection with this Agreement or the Promissory Note. The foregoing limitation on liability shall not apply to the Guaranty provided by the Guarantor pursuant to Section 4 of this Agreement.

[remainder of page left intentionally blank; signature page follows]

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.

MARIN ENERGY AUTHORITY

By: _____
Dawn Weisz
Interim Director

By: _____
Charles McGlashan
Chairman of the Board

RIVER CITY BANK

By: _____
Name: _____
Its: _____

SCHEDULE 2.3

PRINCIPAL PAYMENT SCHEDULE

DATE	PRINCIPAL PAYMENT
September 16, 2010	\$ 49,024
October 16, 2010	\$ 49,238
November 16, 2010	\$ 49,453
December 16, 2010	\$ 49,670
January 16, 2011	\$ 49,887
February 16, 2011	\$ 50,105
March 16, 2011	\$ 50,325
April 16, 2011	\$ 50,545
May 16, 2011	\$ 50,766
June 16, 2011	\$ 50,987
Total	\$500,000

SCHEDULE 7.4

INDEBTEDNESS FOR BORROWED MONEY

\$330,000 loan from County of Marin to Borrower, approved by the County of Marin Board of Supervisors on September 30, 2008.

\$210,000 loan from County of Marin to Borrower, approved by the County of Marin Board of Supervisors on October 12, 2009.

\$200,000 Unsecured Promissory Note between Borrower and Effie Westervelt, dated February 11, 2010.

\$250,000 Unsecured Promissory Note between Borrower and Harvey Skip Berg and Brenda Peratoner Berg, trustees of the Harvey Skip Berg and Brenda Peratoner Berg Revocable Trust u/d/t dated December 19, 1996, as amended, dated February 11, 2010.

\$300,000 Unsecured Promissory Note between Borrower and Gwendolyn Grace, dated February 11, 2010.

\$900,000 Revolving Credit Agreement between Lender and Borrower, dated as of March 16, 2010.

EXHIBIT A

Definitions

"Advance" and *"Advances"* is defined in Section 2.1.

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

"Applicable Rate" means a variable rate of interest equal to the Base Commercial Loan Rate plus two (2) percentage points per annum as adjusted for any maximum or minimum rate limitations as provided in this Agreement.

"Authorized Representative" means those persons shown on the list of officers provided by Borrower pursuant to Section 6.2(a)(iv) hereof, 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.

"Base Commercial Loan Rate" means Lender's Base Commercial Loan Rate (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. As of the date of this Agreement, the Base Commercial Loan Rate is 3.250% per annum.

"Borrower" is defined in the introductory paragraph.

"Borrower Operating Account" is defined in Section 7.9.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are not authorized or required to close in Sacramento, California.

"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.

"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 interest rate that would otherwise be applicable plus five percent (5.0%).

“*Draw Certificate*” means a draw certificate executed and delivered to Lender by Borrower (with appropriate insertions) in connection with each request for an Advance under Section 2.2.

“*Event of Default*” means any event or condition identified as such in Section 8.1.

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

“*Guarantor*” means the Town of Fairfax, California.

“*Guaranty*” means the commercial guaranty dated the Closing Date and executed by Guarantor in favor of Lender in substantially the form of Exhibit D attached hereto.

“*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 9.5.

“*Indemnified Person*” is defined in Section 9.5.

“*Joint Powers Agreement*” means the Joint Powers Agreement of Borrower effective as of December 19, 2008, and as amended from time to time.

“*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 Promissory Note and the Guaranty.

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

“*Maturity Date*” means July 16, 2011.

“*Obligations*” means and includes all loans, advances, debts, liabilities and obligations, howsoever arising, owed by 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.

“*Permitted Liens*” is defined in Section 7.5.

“*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.

“*Pledged Revenues*” shall have the meaning assigned to the term “Temporary Borrowing Monthly Repayment Amount” in the Shell Security Agreement.

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

“*Repayment Date*” means (a) with respect to repayment of interest, the first Business Day of each calendar month commencing on June 1, 2010, and (b) with respect to repayment of principal, the first Business Day of each calendar month commencing on September 16, 2010.

“*Revolving Credit*” is defined in Section 2.1.

“*Revolving Credit Commitment*” means, at any time the same is to be determined, \$500,000.

“*Revolving Credit Termination Date*” means the earlier to occur of (a) the Maturity Date and (b) the date upon which the unused Revolving Credit Commitment is terminated pursuant to Sections 8.2 or 8.3.

“*Shell Agreements*” means (i) the Master Power Purchase and Sale Agreement, dated February 5, 2010, between Shell Energy and Borrower, (ii) the Shell Security Agreement, (iii) the Shell Collateral Account Agreement, and (iv) any and all amendments, modifications and restatements of the documents referred to in the preceding clauses (i) through (iv).

“Shell Collateral Account Agreements” means the “Secured Account Agreement(s)” as defined in the Shell Security Agreement.

“Shell Energy” means Shell Energy North America (US), L.P., a Delaware limited partnership.

“Shell Primary Secured Account” means the “Primary Secured Account” as defined in the Shell Security Agreement.

“Shell Security Agreement” means that certain Security Agreement, dated as of _____, 2010, by and between Shell Energy and Borrower.

“Subsidiary” means any corporation or other Person more than 50% of the outstanding ordinary voting shares or other equity interest of which is at the time directly or indirectly owned by Borrower, by one or more of its Subsidiaries, or by Borrower and one or more of its Subsidiaries.

“Temporary Borrowing Monthly Repayment Amount” has the meaning assigned to such term in the Shell Security Agreement.

“Winding-Up” means, in relation to a Person, the reorganization or reconstruction (save for a solvent reorganization or reconstruction), administration, dissolution, liquidation, insolvency, bankruptcy, granting of a moratorium of payment, receivership, assignment for the benefit of creditors or suspension of payment of that Person, and any equivalent or analogous procedure under the law of any jurisdiction in which that Person is incorporated, organized, domiciled or resident or carries on business or has assets.

EXHIBIT B

DRAW CERTIFICATE

This Draw Certificate is furnished to River City Bank ("*Lender*") pursuant to that certain Revolving Credit Agreement, dated as of March 16, 2010, by and between MARIN ENERGY AUTHORITY ("*Borrower*") and Lender (the "*Revolving Credit Agreement*"). Unless otherwise defined herein, the terms used in this Draw Certificate have the meanings ascribed thereto in the Revolving Credit Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected _____ of Borrower;
2. I have reviewed each of the conditions precedent to Lender's obligation to make an Advance set forth in Section 6 of the Revolving Credit Agreement (collectively, the "*Conditions Precedent*");
3. Each of the Conditions Precedent has been satisfied as of the date of this Draw Certificate; and
4. The proceeds of the Advance requested by this Draw Certificate will be used solely for a purpose permitted by the provisions of the Revolving Credit Agreement.

NOW, THEREFORE, THE UNDERSIGNED, ON BEHALF OF BORROWER, HEREBY REQUESTS:

1. An Advance in the amount of \$ _____ ;
2. That such Advance be made on _____, 20__ (which day shall be a Business Day at least two (2) Business Days after Lender receives this Draw Certificate); and
3. That such Advance be wired to the following account: _____
_____.

The foregoing certifications and requests are made and delivered this _____ day of _____, 20__.

MARIN ENERGY AUTHORITY

By: _____
Dawn Weisz
Interim Director

By: _____
Charles McGlashan
Chairman of the Board

EXHIBIT C

MARIN ENERGY AUTHORITY

PROMISSORY NOTE

\$500,000

_____, 2010

FOR VALUE RECEIVED, **MARIN ENERGY AUTHORITY**, 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*") at its address specified in the Revolving Credit Agreement, the lesser of the principal sum of FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00), or the aggregate unpaid principal amount of all Advances made to Borrower by Lender under the Revolving Credit provided for in the Revolving Credit Agreement hereinafter referred to, together with interest on the unpaid balance from the date of this Promissory Note. All payments of principal and interest on this Promissory Note shall be made in the amounts and at the times specified in the Revolving Credit Agreement.

This Promissory Note evidences Advances made and to be made to Borrower by Lender under the Revolving Credit provided for pursuant to that certain Revolving Credit Agreement dated as of even date herewith between Borrower and Lender (said Revolving Credit Agreement, as the same may be amended modified or restated from time to time, being referred to herein as the "*Revolving Credit Agreement*"), and Borrower hereby promises to pay principal and interest in accordance with the Revolving Credit Agreement, at the office described above on such advances evidenced hereby at the rates and at the times and in the manner specified therefor in the Revolving Credit Agreement.

Each Advance made under the Revolving Credit against this Promissory Note and any repayment of principal hereon will be endorsed by the holder hereof on a schedule to this Promissory Note or recorded on the books and records of the holder hereof (provided that such entries will be endorsed on a schedule to this Promissory Note prior to any negotiation hereof). Borrower agrees that in any action or proceeding instituted to collect or enforce collection of this Promissory Note, the entries endorsed on a schedule to this Promissory Note or recorded on the books and records of the holder will be *prima facie* evidence of the unpaid principal balance of this Promissory Note.

This Promissory Note is issued by Borrower under the terms and provisions of the Revolving Credit Agreement and payment hereon is guaranteed by Guarantor pursuant to a Guaranty, and this Promissory Note and the holder hereof are entitled to all of the benefits provided for thereby or referred to therein, to which reference is hereby made for a statement thereof. This Promissory Note may be declared to be, or be and become, due prior to its expressed maturity, voluntary prepayments may be made hereon before its expressed maturity without premium, all in the events, on the terms and with the effects provided in the Revolving Credit Agreement. All capitalized terms used herein without definition have the same meanings herein as such terms are defined in the Revolving Credit Agreement.

This Promissory 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 the holder hereof in collecting this Promissory Note or enforcing any rights under the Revolving Credit Agreement and the Guaranty. Borrower hereby waives presentment for payment and demand.

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). This includes all accounts Borrower holds jointly with another Person 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 owing on the indebtedness against any and all such accounts.

If any part of this Promissory Note cannot be enforced, this fact will not affect the rest of the Promissory Note. Lender may delay or forego enforcing any of its rights or remedies under this Promissory Note without losing them. Borrower and any other person who signs, guarantees or endorses this Promissory 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 Promissory Note, and unless otherwise expressly stated in writing, no party who signs this Promissory 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 loan evidenced by this Promissory 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 loan without the consent of or notice to anyone other than the party with whom the modification is made.

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

MARIN ENERGY AUTHORITY

By: _____
Dawn Weisz
Interim Director

By: _____
Charles McGlashan
Chairman of the Board

EXHIBIT D

FORM OF GUARANTY

This GUARANTY is made effective as of April _____, 2010 ("Guaranty") by THE TOWN OF FAIRFAX, a municipal corporation of the State of California ("Guarantor"), in favor and for the benefit of Lender under the Revolving Credit Agreement (each as hereinafter defined).

RECITALS

A. Pursuant to a certain revolving credit agreement dated as of March 16, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof in effect, the "Revolving Credit Agreement") by and between Marin Energy Authority ("Borrower") and River City Bank ("Lender"), Lender has agreed to make certain Advances to Borrower. Capitalized terms not defined herein have the meanings ascribed to them in the Revolving Credit Agreement.

B. It is a requirement under Section 4 of the Revolving Credit Agreement that Guarantor shall execute and deliver this Guaranty and that this Guaranty shall be in full force and effect.

C. This Guaranty is given by Guarantor in favor of Lender to guaranty all of the Obligations of Borrower in accordance with the terms of the Revolving Credit Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty. (a) To induce Lender to make the Advances upon the terms and conditions set forth in the Revolving Credit Agreement, and in consideration thereof, Guarantor hereby unconditionally and irrevocably (i) guarantees to Lender and its successors, transferees and assigns, the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) and at all times thereafter of the Obligations of Borrower (including amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Federal Bankruptcy Code of 1978, as amended, or any state bankruptcy statute); and (ii) agrees to pay any and all reasonable expenses (including reasonable attorneys' fees and disbursements and expert witnesses' fees and disbursements) which may be paid or incurred by Lender in enforcing any rights with respect to, or collecting, any or all of the Obligations and/or enforcing any rights with respect to, or collecting against, Guarantor under this Guaranty provided, that this Guaranty is limited as set forth in Section 5 hereof (as so limited, collectively, the "Guaranteed Obligations").

(b) Guarantor agrees that this Guaranty constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be had by Lender to any

security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person.

(c) No payment or payments made by Borrower or any other Person or received or collected by Lender from any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of Guarantor hereunder which shall, notwithstanding any such payment or payments other than payments made to Lender by Guarantor or payments received or collected by Lender from Guarantor, remain liable for the Guaranteed Obligations until the Guaranteed Obligations are indefeasibly paid in full in cash or cash equivalents.

(d) Guarantor understands, agrees and confirms that this is a guaranty of payment when due and not of collection and that Lender may, from time to time, enforce this Guaranty up to the full amount of the Guaranteed Obligations owed to Lender without proceeding against any other Person, against any security for the Guaranteed Obligations, against any other guarantor or under any other guaranty covering the Guaranteed Obligations.

2. Waiver by Guarantor. Until the payment and satisfaction in full of all Guaranteed Obligations and the expiration or termination of any commitment to lend by Lender under the Revolving Credit Agreement, Guarantor hereby waives absolutely and irrevocably any claim which it may have against Borrower or any of its respective Affiliates by reason of any payment to Lender, or to any other Person pursuant to or in respect of this Guaranty, including any claims by way of subrogation, contribution, reimbursement, indemnity or otherwise.

3. Consent by Guarantor. Guarantor hereby consents and agrees that, without the necessity of any reservation of rights against Guarantor and without notice to or further assent by Guarantor, any demand for payment of any of the Guaranteed Obligations made by Lender may be rescinded by Lender and any of the Guaranteed Obligations continued, and the Guaranteed Obligations, or the liability of any other party upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Lender; and the Revolving Credit Agreement or other guaranty or documents in connection therewith, or any of them, may be amended, modified, supplemented or terminated, in whole or in part, as Lender may deem advisable from time to time; and any guaranty or right of offset may be sold, exchanged, waived, surrendered or released, all without the necessity of any reservation of rights against Guarantor and without notice to or further assent by Guarantor, which will remain bound hereunder, notwithstanding any such renewal, extension, modification, acceleration, compromise, amendment, supplement, termination, sale, exchange, waiver, surrender or release. Lender shall have no obligation to protect, secure, perfect or insure any property at any time held as security for the Guaranteed Obligations. When making any demand hereunder against Guarantor, Lender may, but shall be under no obligation to, make a similar demand on Borrower, any other Person who at any time guaranties or pledges any assets to secure the Guaranteed Obligations, or any one or more of them (a "Credit Party") or any such other guarantor, and any failure by Lender to make any such demand or to collect any payments from such other Credit Party

or any such other guarantor or any release of such other Credit Party or any such other guarantor or of Guarantor's obligations or liabilities hereunder shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of Lender against Guarantor hereunder. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

4. Waivers; Successors and Assigns. Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Lender upon this Guaranty or acceptance of this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty, and all dealings between Guarantor and any other Credit Party, on the one hand, and Lender, on the other hand, shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty. Guarantor waives diligence, presentment, protest, demand for payment and notice of default or non-payment to or upon any Credit Party or Guarantor with respect to the Guaranteed Obligations. This Guaranty shall be construed as a continuing, absolute and unconditional guaranty of payment without regard to the validity, regularity or enforceability of the Revolving Credit Agreement, the other Loan Documents, any of the Guaranteed Obligations or any guaranty therefor or right of offset with respect thereto at any time or from time to time held by Lender and without regard to any defense (other than the defense of payment), set-off or counterclaim which may at any time be available to or be asserted by any Credit Party against Lender, or by any other circumstance whatsoever (with or without notice to or knowledge of Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Guaranteed Obligations, or of Guarantor under this Guaranty, in bankruptcy or in any other instance, and the obligations and liabilities of Guarantor hereunder shall not be conditioned or contingent upon the pursuit by Lender or any other Person at any time of any right or remedy against any Credit Party or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or Guaranty therefor or right of offset with respect thereto. This Guaranty shall be a primary obligation of Guarantor to secure the payment of the Guaranteed Obligations and Lender shall have no obligation whatsoever to seek payment of the Guaranteed Obligations from Borrower in the event an Event of Default has occurred and is continuing. This Guaranty shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon Guarantor and the successors and assigns thereof, and shall inure to the benefit of Lender, and their respective successors, transferees and assigns (including each holder from time to time of Guaranteed Obligations), until all of the Guaranteed Obligations and the obligations of Guarantor under this Guaranty shall have been satisfied by indefeasible payment in full in cash or cash equivalents, notwithstanding that from time to time during the term of the Revolving Credit Agreement any Credit Party may be released from all of its Guaranteed Obligations thereunder.

5. Limited Liability; Termination. Notwithstanding any contrary provision of this Guaranty or the Credit Agreement, it is hereby expressly agreed that (i) in no event shall the aggregate liability of Guarantor for the Guaranteed Obligations hereunder exceed One Hundred Thousand dollars (\$100,000) and (ii) no officer, employee, servant, controlling Person, executive, supervisor, agent, authorized representative of affiliate (herein referred to as "operatives") of Guarantor shall be personally liable for payments due under this Guaranty for the performance of any obligation hereunder. Nothing contained in this Section shall prevent Lender from exercising

any rights or remedies against Borrower pursuant to any Loan Document. Upon the Discharge Date, the obligations of the Guarantor hereunder shall be deemed to be fully discharged and the Guaranty shall be terminated.

6. Effectiveness; Reinstatement. This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Credit Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any Credit Party or any substantial part of its property, or otherwise, all as though such payments had not been made.

7. Payments of Guaranteed Obligations. Guarantor hereby guarantees that the Guaranteed Obligations will be paid for the benefit of Lender without set-off or counterclaim in lawful currency of the United States of America at the office of Lender located at 2485 Natomas Park Drive, Sacramento, California 95833. Guarantor shall make any payments required hereunder within five (5) days of receipt of written notice thereof from Lender; provided, however, that such written notice may only be sent after the occurrence and during the continuation of an Event of Default and provided, further, however, that the failure of Lender to give such notice shall not affect Guarantor's obligations hereunder.

8. Representations and Warranties. To induce Lender to enter into the Revolving Credit Agreement and to make the Advances thereunder, Guarantor represents and warrants to Lender that the following statements are true, correct and complete on and as of the date hereof:

(a) Organization and Qualification; Authority; Consents. Guarantor is a political subdivision of the State of California duly organized, validly existing under and operating pursuant to the laws of the State of California, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing 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. Guarantor has full right and authority to enter into this Guaranty and to perform each and all of the matters and things herein provided for; and this Guaranty does not, nor does the performance or observance by Guarantor of any of the matters or things herein or therein provided for, contravene any provision of law or any organizational document of Guarantor or any covenant, indenture or agreement of or affecting Guarantor or any of its Properties. The execution, delivery, performance and observance by Guarantor of this Guaranty and any other instruments and documents executed by Guarantor in connection with this Guaranty 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.

(b) Legal Effect. This Guaranty constitutes a legal, valid and binding agreement of Guarantor, enforceable in accordance with its 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.

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

(d) Compliance with Laws. Guarantor 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 Guarantor. Guarantor 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 Guarantor.

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

9. Covenants. Guarantor agrees that, so long as any credit is available to or in use by Borrower under the Revolving Credit Agreement, except to the extent compliance in any case or cases is waived in writing by Lender:

(a) Financial Reports. Guarantor shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives any publicly available information respecting the business and financial condition of Guarantor as Lender may reasonably request.

(b) Compliance with Laws. Guarantor 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 Guarantor or could result in a Lien upon any of its Property.

(c) Notices of Claims and Litigation. Guarantor shall promptly inform Lender in writing of (1) all material adverse changes in Guarantor's financial condition and (2) all existing litigation and all written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Guarantor which could materially affect the financial condition of Guarantor.

10. No Waiver. No failure to exercise and no delay in exercising, on the part of Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

11. Notices. All notices, demands, instructions or other communications required or permitted to be given to or made upon any party hereto shall be given in accordance with the provisions of the Credit Agreement and at the address set forth therein or as provided on the signature page hereof.

12. Amendments, Waivers, etc. No provision of this Guaranty shall be waived, amended, terminated or supplemented except by a written instrument executed by Guarantor and Lender.

13. GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

14. CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GUARANTOR WITH RESPECT TO THIS GUARANTY AGREEMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SACRAMENTO, CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS GUARANTY AGREEMENT GUARANTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

15. Counterparts. This Guaranty and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized officer on the day and year first above written.

THE TOWN OF FAIRFAX

By: _____
Lew Tsemaine
Mayor

Notice Address:

142 Bolinas Road
Fairfax, CA 94930
Attention: Michael Rock

EXHIBIT E

COMPLIANCE CERTIFICATE

This Compliance Certificate is furnished to River City Bank ("*Lender*") pursuant to that certain Revolving Credit Agreement, dated as of March 16, 2010, by and between MARIN ENERGY AUTHORITY ("*Borrower*") and Lender (the "*Revolving Credit Agreement*"). Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Revolving Credit Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected _____ of Borrower;
2. I have reviewed the terms of the Revolving Credit Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Compliance Certificate, except as set forth below; and
4. If attached financial statements are being furnished pursuant to Section 7.3 of the Revolving Credit Agreement, the Attachment hereto sets forth financial data and computations evidencing Borrower's compliance with certain covenants contained in the Agreement, all of which data and computations are, to the best of my knowledge, true, complete and correct in all material respects.

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

The foregoing certifications, together with the computations set forth in the Attachment hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

MARIN ENERGY AUTHORITY

By: _____
Dawn Weisz
Interim Director

By: _____
Charles McGlashan
Chairman of the Board

Subordination Agreement

THIS AGREEMENT made as of _____, 2010 among the Town of Fairfax, 142 Bolinas Road, Fairfax, California 94930 (the "**Subordinator**"), Shell Energy North America (US), L.P., of 909 Fannin, Plaza Level 1, Houston, Texas 77010 (the "**Shell Energy**") and Marin Energy Authority, of 3501 Civic Center Drive, Room 308, San Rafael, California 94903 (the "**Debtor**").

WHEREAS:

- (A) The Debtor is or will be indebted to River City Bank in the approximate amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) pursuant to that certain Unsecured Promissory Note dated _____, 2010 (the "**Loan Document**");
- (B) Pursuant to the terms of the Loan Document, the Subordinator has agreed to guaranty ONE HUNDRED THOUSAND DOLLARS (\$100,000) of such amount pursuant to the Guaranty by Subordinator in favor of River City Bank in connection with the Loan Document (the "**Guaranty**");
- (C) The Debtor will be obligated to Shell Energy in varying amounts for the purchase of power and related energy products and services pursuant to that certain Master Power Purchase and Sale Agreement (the "**Master Agreement**") dated February 5, 2010 between Debtor and Shell Energy and transaction confirmations executed in accordance therewith (such obligations of Debtor to Shell Energy is hereinafter referred to as the "**Shell Energy's Indebtedness**");
- (D) As collateral security for Shell Energy's Indebtedness, the Debtor has agreed to grant to Shell Energy a first priority security against that certain Revenue Account of Debtor located at River City Bank (the "**Bank Account**") (such security together with all other security heretofore or hereafter acquired by Shell Energy from the Debtor in connection with Shell Energy's Indebtedness is hereinafter referred to as the "**Shell Energy's Security**");
- (E) As a condition of extending credit to Debtor pursuant to the Master Agreement and extending the Shell Energy's Indebtedness, Shell Energy has required this Agreement to be entered into, and it is in reliance upon this Agreement that Shell Energy is extending such credit;

NOW THEREFORE in consideration for the foregoing and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Subordinator agrees as follows:

1. **Consent of the Subordinator.** The Subordinator consents to the issuance by the Debtor of Shell Energy's Security in favor of Shell Energy and the granting of security in its assets thereunder.

2. **Subordination.** The Subordinator hereby agrees with Shell Energy that Shell Energy's Security with respect to the Bank Account of the Debtor shall rank in priority to any security that the Subordinator may take in the Debtor's Assets (as hereinafter defined). Subordinator agrees that it (i) shall not place any lien, security interest or other encumbrance on any Debtor Asset and (ii) shall not exercise or claim any right of offset, banker's lien or other like right against any Deposit Account (as hereinafter defined) of Debtor unless and until Shell Energy has confirmed in writing that all of the Shell Energy's Indebtedness are paid in full. For purposes of this section, the term 'Debtor's Asset' shall collectively mean all of Debtor's (a) personal property, (b) documents, (c) accounts, (d) investment property, (e) deposit accounts, (f) letter of credit rights, (g) general intangibles, and any supporting obligations or ancillary rights to any of the assets enumerated in sub-sections (a) through (g). Each item listed in sub-sections (a) through (g) and the term "Deposit Account" shall have the meanings ascribed thereto by the Uniform Commercial Code as adopted in the State of California and as amended from time to time.

3. **Event of Default.** If Shell Energy provides Subordinator with written notice that an "Event of Default" has occurred and is continuing under the Master Agreement (or any transaction entered into thereto), then until the earlier of (i) such time as all indebtedness, obligations and liabilities of the Debtor to Shell Energy (including all the Shell Energy's Indebtedness) are paid in full, or (ii) such Event of Default has been cured and Shell Energy has not commenced the exercise of any remedies in connection with such Event of Default:
 - (a) the Subordinator shall postpone the payment and satisfaction by the Debtor and its subsidiaries of all indebtedness, liabilities and obligations arising out of the Guaranty owing by the Debtor and its subsidiaries to the Subordinator including, without limitation, the repayment of draws upon the Guaranty (the "**Subordinated Obligations**") in favor of, and shall subordinate the Subordinated Obligations to, all indebtedness, liabilities and obligations of the Debtor and its subsidiaries to Shell Energy; and
 - (b) the Subordinator shall not demand or accept payment of all or any part of the Subordinated Obligations.

Notwithstanding anything to the contrary herein, so long as no "Event of Default" has occurred and is continuing under the Master Agreement (or any transaction entered into thereto), Shell Energy acknowledges and agrees that Debtor may continue to make payments with respect to the Subordinated Obligations to the Subordinator in accordance with the Loan Document.

4. **Filings by Shell Energy.** The Subordinator hereby consents to the filing by Shell Energy of financing change statements or to any similar registrations or filings in any and all appropriate jurisdictions in respect of the postponement and subordination of the

Subordinated Obligations provided for above, and the Subordinator shall, upon receipt of a written request from Shell Energy to do so, undertake such registrations or filing in prescribed form.

5. **Monies Held in Trust.** In the event any payments are made by the Debtor or any of its subsidiaries to the Subordinator in contravention of this Agreement, the Subordinator shall hold such payments in trust for Shell Energy and shall forthwith pay such payments to Shell Energy.
6. **Extensions, Waivers, Etc.** The Subordinator also agrees that Shell Energy may grant extensions of time, release obligors and/or security, and waive any other rights in relation thereto, without affecting the rights of Shell Energy nor the obligations of the Subordinator hereunder.
7. **Further Assurances.** The Subordinator shall from time to time and at all times hereafter do all things and execute all documents which may be necessary or desirable in order to give full effect to this Agreement.
8. **Costs and Expenses.** The priorities described herein shall extend to and include all reasonable costs and expenses incurred by either of the Subordinator or Shell Energy pursuant to and as authorized by their respective security and shall include without limitation all unpaid interest, costs of collection, attorney fees, consultant's fees and disbursements, receiver's fees and disbursements and agent's fees and disbursements.
9. **Proceeds.** The proceeds resulting from the enforcement or realization of any of Shell Energy's Security will be dealt with in such ways so as to give effect to the provisions of this Agreement and the priorities created and established hereby.
10. **Disentitlement of Proceeds.** Nothing herein contained shall be construed as entitling either Shell Energy or the Subordinator (collectively the "**Creditors**") to receive any proceeds from any of the property or assets of the Debtor in respect of which such Creditor does not have any security, in respect of which the security is invalid and unenforceable as against third parties or in respect of which the obligation in respect of which the security stands as continuing collateral security is invalid or unenforceable. If any person shall have a valid claim to proceeds of realization from any of the property or assets of the Debtor in priority to or on a parity with the other Creditor, then this Agreement shall not apply so as to diminish the rights (as such rights would have been but for this Agreement) of the latter Creditor to the proceeds of realization from such property or assets. Nothing contained in this Agreement shall be construed as conferring any rights upon the Debtor or any third party. The priorities provided for in this Agreement shall be effective notwithstanding any matter or thing including, without limitation, the order of any bankruptcy court having jurisdiction as to the entitlement of the Creditors to any proceeds.

11. **Right to Information.** Each of the Subordinator and Shell Energy shall furnish to each other within a reasonable period of time from time to time upon request full information and particulars as to the indebtedness owing by the Debtor to it and as to any events of default which may have occurred under the terms of its security and such other information as may be reasonably requested of it.
12. **Covenant by Debtor.** The Debtor hereby acknowledges and consents to the priorities in respect of the interests of the Creditor and the Subordinator as herein set forth and covenants that it will maintain and deal with all of its assets and undertaking in accordance with the terms of this Agreement.
13. **Acknowledgement by Subordinator.** The Subordinator acknowledges the benefit to it of Shell Energy extending credit to the Debtor.
14. **Notices.** Any notice required to be served and any payments required to be made hereunder shall be deemed to have been properly served or paid if addressed as follows:

To the Subordinator: Town of Fairfax
 142 Bolinas Road
 Fairfax, California 94930

To Shell Energy: Shell Energy North America (US), L.P.
 909 Fannin, Plaza Level 1
 Houston, Texas 77010

To the Debtor: Marin Energy Authority
 3501 Civic Center Drive, Room 308
 San Rafael, California 94903

Any such notice may be made by fax or letter or other method of written communication and shall be deemed to have been received, if delivered, on the date of delivery or, if sent by fax or other similar communication, on the business day following transmission and any such payment shall be deemed to have been paid when delivered personally. Any party may change its address for notice or payment at any time by notice given to the other parties hereto pursuant to the provisions of this Agreement.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and may not be amended or modified in any respect except by written consent signed by the parties hereto.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to its conflict of laws provisions.
17. **Successors and Assigns.** The provisions of this Agreement shall enure to the benefit of and be upon the parties hereto and their respective successors and assigns, provided that the Subordinator shall not assign or transfer any or all of its rights thereunder relating to the undertaking and assets of the Debtor unless and until the proposed assignee or transferee shall have delivered to the other parties hereto a written agreement under seal to be bound by the provisions hereof to the same extent as the Subordinator.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

Town of Fairfax

Per: _____

Shell Energy North America (US), L.P.

Per: _____

Name:
Title:

Marin Energy Authority

Per: _____

Name:
Title: