

THIS LOAN AGREEMENT made as of the 31<sup>st</sup> day of August, 2020.

BETWEEN:

**THE POWER COMMISSION OF THE CITY OF SAINT JOHN**, located at 325 Simms Street, Saint John, N.B., E2L 4C7 (herein referred to as the “Power Commission” or the “Borrower”

-and-

**THE CITY OF SAINT JOHN**, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, City Hall Building, 15 Market Square, P.O. Box 1971, Saint John, N.B., E2L 4L1 (herein referred to as the “City”).

Whereas the City by resolution of its Common Council adopted on the 22 day of December, 1922 established the Power Commission of The City of Saint John (the “Power Commission”) pursuant to the New Brunswick Electric Power Act, 1920 (10 Geo V c. 53); and

Whereas the aforesaid resolution, amongst other things, entrusted to the Power Commission the “... erecting, constructing, and operating works for the transmission and distribution of electrical power and energy in the City of Saint John, and of controlling and managing the same....such Commission to proceed only so far as may be authorized by the Common Council from time to time.”; and

Whereas the Power Commission currently operates under the business name and style of Saint John Energy (SJE); and

Whereas the Power Commission has proposed the construction, operation and management of electrical infrastructure projects referred to as the Burchill Windfarm Interconnection Project and the Paradise Row Substation Project (the Proposals), descriptions of which are more fully set out herein; and

Whereas the City by resolution adopted on the 31st day of August 2020 has approved the Proposals and has entrusted to the Power Commission the design, construction, operation and management of the Proposals; and

Whereas the City by resolution adopted on the 31st day of August 2020 has agreed to borrow the monies required to permit the design, construction and commissioning of the Proposals, and to provide those monies to the Power Commission for those purposes alone; and

Whereas agreement has been reached upon the terms of repayment by the Power Commission to the City of the monies referred to in the immediately preceding recital,

Now Therefore This Agreement Witnesseth that for and in consideration of these presents and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. Interpretation**

(1) *Definitions.* In this agreement, unless otherwise stated the following terms shall have the meaning prescribed for each as follows:

(a) “Applicable Laws” means all present or future statutes, regulations, municipal by-laws, rules, orders, applicable common law standards and principles, treaties, conventions, judgments, awards, and other lawful determinations of any government or governmental agency or other comparable body, or court or other tribunal of competent jurisdiction in any applicable jurisdiction;

(b) “Business Day” means any day other than Saturday or Sunday or a statutory holiday so recognized by the Province of New Brunswick;

(c) “Loan” means the funds lent by the City to the Borrower described in Article 2 of this Loan Agreement, and includes all accrued outstanding interest on the principal amount;

(d) “Loan Agreement” means this agreement, including any schedules attached hereto, as same may be further amended, restated, extended, supplemented or otherwise modified from time to time.

(e) “Loan Purposes” means the use by the Borrower of the Loan to achieve the design, construction, erecting and commissioning of the Proposals as more fully described herein;

(f) “Parties” means the Borrower and City, and “Party” means one of them as the context provides; and

(g) “Proposals” means: The Paradise Row Substation Project, having an estimated cost of ten million dollars (\$10M), consisting generally of the purchase of a parcel of land and a building located at 90 Paradise Row (PID 55234835) along with the construction of an electrical substation facility to step down voltage at this site. Included in the construction costs will be the acquisition of all necessary electrical transformation and switching equipment, civil works, labour and professional services required build the station. This project will consolidate and replace the Commission’s existing Union and Crown Street substations and is part of a successful funding application under the Federal Disaster Mitigation and Adaptation Fund, AND the Burchill Wind

Farm Interconnection Project, having an estimated cost of fifteen million dollars (\$15M) and consisting generally of an express distribution feeder line extending from the Burchill Wind Farm generation site, to be located in the Spruce Lake Industrial Park area, to various points of the Commission's Distribution System. The project will include the acquisition of supporting structures, cable, electrical transformation equipment, civil works and associated construction labour and professional engineering services.

(h) "Provincial Loan Documents" means the debenture to be issued by the City to the Province of New Brunswick for the purposes, inter alia, of borrowing the monies which are to be loaned by the City to the Borrower pursuant to this Loan Agreement, as such loan documentation may be further amended, restated, extended, supplemented or otherwise modified from time to time.

(2) *Assignment*. This Agreement will be binding upon the Parties' respective successors and lawful assigns, provided that a Party may only assign its rights or obligations under this Agreement with the written consent of the other party.

(3) *Invalidity*. Any provision in this Loan Agreement which is held to be illegal or unenforceable shall be ineffective to the extent of such illegality or unenforceability without invalidating the remaining provisions of this Loan Agreement.

(4) *Further Assurances*. The Parties shall with reasonable diligence do all things and provide all reasonable assurances as may be required to implement the provisions of this Loan Agreement, and each Party shall provide such further documents, instruments and cooperation requested by the other Party as may be reasonably necessary or desirable to give effect to this Loan Agreement and to carry out its provisions.

(5) *Sections, Headings and Contra Proferentem*. The division of this Loan Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and shall not affect the interpretation or construction of this Loan Agreement. Unless otherwise indicated, any reference in this Loan Agreement to an Article, Section, Paragraph or Schedule refers to the prescribed Article, Section, Paragraph or Schedule to this Loan Agreement. Each Party acknowledges that it has reviewed and participated in determining the terms and conditions of this Loan Agreement and agree that any rule of construction or doctrine of interpretation, including *contra proferentem*, construing or interpreting any ambiguity against the drafting Party shall not apply.

(6) *Waiver*. No waiver of any provision of this Loan Agreement, including waiver of a breach of this Loan Agreement, shall constitute a waiver of any other provision or breach of this Loan Agreement unless expressly provided otherwise. No waiver shall be binding unless executed in writing.

(7) *Governing Law*. This Loan Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

(8) *Time of the Essence*. Time shall be of the essence of this Agreement and of every part hereof, and no extension or variation to this Loan Agreement shall operate as a waiver of this provision.

(9) *Amendment*. This Loan Agreement may only be changed by a document in writing signed by both Parties.

(10) *Entire Agreement*. This Loan Agreement constitutes the entire agreement between the Parties in regard to its subject-matter. It supersedes all prior agreements, understandings, representations, warranties, proposals, negotiations and discussions, whether oral or written, between the Parties.

## **2. Loan**

The City agrees to lend to the Borrower and the Borrower agrees to borrow from the City the sum of Twenty-Five Million Dollars (\$25,000,000.00) of lawful money of Canada (the “Loan”). In the event that the Province of New Brunswick approves a debenture from the City which reflects Provincial support for only one of the Proposals, then in such event the amount of the Loan will be reduced accordingly. The Borrower shall use the funds solely for the Loan Purposes and for no other use.

## **3. Loan Repayment Terms**

(1)(a) the Loan including both principal and interest, shall be repaid by the Borrower to the City on the dates and in the amounts to be stipulated or provided for in the Provincial Loan Documents anticipated to be issued by the City to the Province of New Brunswick for the purpose, inter alia, of funding the Proposals;

(b) the Borrower shall include with the first installment of the repayment an additional one-time payment of 0.1% of the Loan amount.

(2) the Parties expressly acknowledge and agree that the dates and amounts referred to in (1) are not known precisely as of the execution of this Agreement, and further acknowledge and agree that once established by the Provincial Loan Documents shall be irrevocably binding upon Parties;

(3) the Borrower may repay the whole of the Loan balance then outstanding, at any time upon providing notice of its intention to do so, to the City and upon receiving the City’s consent to such early repayment.

(4) the City will accept the following forms of payment: wire transfer, cheque.

## **4. Conditions Precedent**

In addition to all other terms and conditions of this Loan Agreement, the provision of the Loan to the Borrower is conditional upon each of the following:

(a) Receipt by the City of a copy of this Loan Agreement, duly executed by the Borrower;

(b) Receipt by the City of such other information, records, and documentation from the Borrower as the City may request and that is satisfactory to the City in its absolute discretion; and

(c) Subject to Article 2, the City’s receiving from the Province of New Brunswick the sum of \$25,000,000.00 pursuant to the Provincial Loan Documentation in order to enable it to make the Loan contemplated herein.

## **5. Representations and Warranties of the Borrower**

(1) *General.* Borrower makes the following representations and warranties to the City acknowledging that the City is relying on the truthfulness and accuracy of each representation and warranty in entering into this Loan Agreement, and with the further acknowledgment that the City would not have entered into this Loan Agreement without any of such representations and warranties of the Borrower:

(a) *Authorization.* Borrower represents and warrants to the City that this Loan Agreement has been duly authorized, executed and delivered by the Borrower and is a legal, valid and binding obligation of the Borrower, enforceable against the Borrower by the City in accordance with its terms except only as such enforcement may be restricted or limited by any applicable laws in regard to bankruptcy, insolvency or the enforcement of creditors' rights generally. No authorization or approval or other action by, and no notice to or filing with, any government authority or regulatory body or other party is required for the due execution, delivery or performance by the Borrower of this Loan Agreement, except for authorizations, approvals, actions, notices or filings which have been duly obtained or made and are in full force and effect.

(b) *Authorization to do Business.* Borrower represents and warrants to the City that the Borrower has all requisite licenses, permits, consents and other legal authority under Applicable Laws to carry on business in New Brunswick.

(c) *Conflicting Agreements.* Borrower represents and warrants to the City that the entering into and performance of this Loan Agreement, does not conflict, nor with the passage of time will conflict or result in a breach or violation of, the Borrower's by-laws, or conflict with or breach any other agreement to which the Borrower is a party.

(d) *Not Bankrupt or Insolvent.* Borrower represents and warrants to the City that the Borrower has not made any assignment for the benefit of creditors, nor has any receiving order been made against the Borrower under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, or other applicable bankruptcy and insolvency legislation, nor has any petition for such an order been served on the Borrower, nor any proceedings initiated or contemplated under the provisions of the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, or the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, nor has any receiver, receiver and manager, monitor, custodian or official with similar powers been appointed by court order or privately respecting the Borrower or any of its assets.

(e) *No Default.* Borrower represents and warrants to the City that the Borrower is not in default under any bond, guarantee or other instrument of indebtedness.

(f) *No Legal Proceedings.* Borrower represents and warrants to the City that there is no claim, action, prosecution or other legal proceeding of any kind pending or threatened in any jurisdiction in which the Borrower does business, and before any court or other tribunal, including any administrative agency, in regard to any matter which, if adversely determined, might have a

material adverse effect on its financial condition or ability otherwise to undertake its business or meet its obligations under this Loan Agreement.

(g) *Compliance with Laws.* Borrower represents and warrants to the City that the Borrower is in compliance with all Applicable Laws and, to the knowledge of the Borrower there is no fact, circumstance or event currently or with the passage of time that would cause or result in any violation of the same.

(2) *Continuation of Representations and Warranties.* The representations and warranties of the Borrower described in this Clause 5 shall remain in effect for the term of this Loan Agreement.

## **6. Affirmative Covenants**

The Borrower covenants and agrees with the City to the following:

- (a) Borrower shall pay all amounts due to the City under this Loan Agreement;
- (b) Borrower shall maintain all licenses, permits, privileges, consents and other rights and authority for the ongoing conduct of its business in all jurisdictions in which it conducts business as of the commencement date of this Loan Agreement; and
- (c) Borrower shall maintain insurance with reputable insurers in such amounts and against such risks as is usually carried by prudent owners of comparable businesses in the same jurisdiction(s) in which the Borrower conducts business.

## **7. Negative Covenants**

(1) The Borrower covenants and agrees with the City to the following:

- (a) Without the prior written consent of the City, the Borrower shall not sell, lease, convey, transfer or otherwise dispose of any business, property or other assets of the Borrower other than in the ordinary course of business.

## **8. Events of Default**

On the happening of any of the following events of default the City shall provide notice to the Borrower of the details of such event of default and the Borrower shall remedy such default to the City's satisfaction within 30 days of receipt by the Borrower of such notice of default, provided that should the Borrower fail to remedy such default to the City's satisfaction within such 30 day period, the City may, at its option, forthwith and upon written notice, cancel the Loan and declare the outstanding principal balance of the Loan and accrued interest to be immediately due and repayable, and the same shall be immediately due and payable:

- (a) Borrower fails to make any of the payments in the amounts and at the times specified in this Loan Agreement;
- (b) Borrower is in breach of any covenant, representation and warranty, or condition precedent under this Loan Agreement;
- (c) Borrower is in breach of any other agreement between the City and the Borrower;

- (d) Borrower makes any assignment for the benefit of creditors or any petition for a receiving order has been made against the Borrower under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- (e) Borrower suspends or otherwise fails to carry on its business;
- (f) Borrower defaults in the payment of moneys owing to any other creditor for the business; or
- (g) City in good faith believes that the prospect of repayment of the Loan or performance otherwise by the Borrower of its obligations under this Loan Agreement is impaired or doubtful.

## **9. Indemnification**

Whenever the City shall sustain or incur any losses and expenses in connection with:

- (a) the declaration by the City following the occurrence of an event of default, that the Loan is immediately due and payable;
- (b) the failure of the Borrower to pay when due principal, interest, fees or any other amount under this Loan Agreement when due (whether at maturity, by reason of acceleration or otherwise); or
- (c) any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the City in any way relating to or arising out of the Provincial Loan Documents, the Loan Agreement or the transactions therein contemplated as a result of the default of the Borrower hereunder,

the Borrower indemnifies and holds harmless and agrees to pay the City, upon demand, an amount certified by the City to be necessary to compensate it for all such losses and expenses, which the Borrower hereby agrees to pay to the City together with interest thereon at the interest rate provided for herein. The certificate of the City shall also specify the computation and reasonable explanations of the amount to be paid. The agreements of the Borrower under this Section shall survive the repayment of the Loan.

## **10. Generals**

(1) *Notices.* All notices to be given under this Loan Agreement shall be in writing and either hand delivered or sent by registered mail to the address of the other Party set out below. If by registered mail, any such notice shall be deemed to have been received on the fifth (5th) Business Day after mailing, and if hand delivered, on the date of delivery.

Borrower Address:

### **The Power Commission of The City of Saint John**

325 Simms Street

Saint John, N.B., E2L 4C7

Attention: ●

City Address: The City of Saint John  
City Hall Building  
15 Market Square  
P.O. Box 1971  
Saint John, N.B., E2L 4L1  
Attention: ●

Either Party may change its address by written notice to the other given in the manner set out above.

(2) *Record of Indebtedness.* The outstanding amount of the Loan owed by the Borrower to the City from time-to-time will be determined by the records of the City. The records shall constitute *prima facie* proof of the validity of the amount owing.

IN WITNESS WHEREOF, the Parties have executed this Agreement, under seal, as of the date first written above.

Witness: THE POWER COMMISSION OF THE CITY OF SAINT JOHN



Ray Robinson, P. Eng.  
President & CEO

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Witness: THE CITY OF SAINT JOHN

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