EBCE-SJCE 2023 Long-Term Resource RFO Attachment E.1: Term Sheet

**Power Purchase Agreement Term Sheet – Renewable Energy**

This indicative term sheet (“**Term Sheet**”) is entered into as of \_\_\_\_\_, 2023 (the “**Effective Date**”) between [East Bay Community Energy Authority, a California joint powers authority (“**EBCE**”)] [City of San José, a California municipal corporation, doing business as San José Clean Energy (“**SJCE**”)] and [Seller Name] (“**Seller**”) in connection with the 2023 Long-Term Resource Request for Offers (“**RFO**”). This Term Sheet is intended to set forth the key commercial terms and conditions to be included in a proposed power purchase agreement (“**PPA**”) between Seller and Buyer for the purchase and sale of the Product (the “**Proposed Transaction**”) from the Facility. Negotiation of the PPA is subject to Buyer selecting the Proposed Transaction for the negotiation shortlist, the terms and conditions of the RFO, timely execution of the Exclusive Negotiating Agreement (as defined below) and posting of the Shortlist Deposit (as defined in the Exclusive Negotiating Agreement) by Seller. Until a definitive Agreement is approved by Seller’s management, [EBCE/SJCE] management and the [EBCE Board of Directors][San José City Council], and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other manner, under this Term Sheet.

1. **PPA Terms and Conditions**.

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| **Seller:** | [Seller Name, e.g., Project Company LLC] (“**Seller**”) |
| **Buyer:** | [East Bay Community Energy Authority, a California joint powers authority] [City of San José, a California municipal corporation, doing business as San José Clean Energy] (“**Buyer**”). As used in the Agreement, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.” |
| **Description of Facility:** | A [XX] MW [e.g., solar photovoltaic, wind, geothermal, small hydro, etc.] project (the “**Facility**”) located in \_\_\_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_\_\_. |
| **Product:** | The “**Product**” shall meet the Portfolio Content Category 1 specifications, and includes all of the following:   1. Facility Energy; 2. Environmental Attributes: All renewable energy credits (“**RECs**”) and any other environmental attributes associated with Facility Energy; 3. Capacity Attributes: All capacity rights, including resource adequacy benefits, if any, associated with the Facility; 4. Ancillary Services: All ancillary services, products and other attributes, if any, that may be obtained from the Facility.   Specifications for Portfolio Content Category 1 are described in California Public Utilities Code §399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders. |
| **Guaranteed Capacity:** | The Facility has a guaranteed generating capacity of [XX] MW (the “**Guaranteed Capacity**”). |
| **Interconnection Capacity**: | The Facility has, or will have, an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity.  Seller shall ensure that, during the Test Energy period and throughout the Delivery Term, Seller shall have sufficient interconnection capacity and rights under or through the interconnection agreement to interconnect the Facility with the CAISO-Controlled Grid and fulfill its obligations under the Agreement. |
| **Scheduling Coordinator:** | [Buyer or Buyer’s agent][Seller or Seller’s agent] shall act as Scheduling Coordinator for the Facility. |
| **Delivery Term:** | “**Delivery Term**” means [XX] Contract Years. |
| **Expected Energy:** | “**Expected Energy**” means[XXX,XXX] MWh during the first 12-month Contract Year and for each 12-month Contract Year thereafter during the Delivery Term. [*If there is an annual adjustment for degradation, this should be noted.*][*Note – not applicable for shaped product.*] |
| **Hourly Settlement Quantity:** | **[*If Seller is providing a shaped product*]**   |  |  | | --- | --- | | **Hour Ending** | **Hourly Settlement Quantity (MWh)** | | [XX] | [XX] | | [XX] | [XX] | | [XX] | [XX] | |
| **Contract Price:** | **[*Select one*]**  **Option A:**  The “**Contract Price**” shall be $[XX.XX]/MWh, [with escalation at 2% per Contract Year] [with no escalation].  **Option B:**  “**Contract Price**” shall be equal to the sum of the Energy Price and the REC Price, less the CAISO Credit.  Contract Price shall be calculated as follows:  Contract Price = (Energy Price + REC Price) - CAISO Credit  Where:  “**CAISO Credit**” means the Energy Price paid by the CAISO for the energy associated with the Product.  “**Energy Price**” means the applicable day-ahead hourly market, hour-ahead fifteen-minute market, or real-time five-minute market, locational marginal price clearing at the Delivery Point, as published by the CAISO, per MWh of energy delivered.  “**REC Price**” is equal to $XX.XX/MWh. |
| **Test Energy Rate:** | Prior to COD, Buyer will purchase all Test Energy and any associated Product at 50% of net CAISO revenues associated with Facility Energy. |
| **Annual Excess Energy:** | [*If Seller is providing a shaped product:* During any Contract Year, if the amount of Facility Energy for such Contract Year exceeds the Annual Contract Quantity, then for the amount of Facility Energy that would exceed the Annual Contract Quantity (“**Excess MWh**”), (i) Buyer shall have no obligation to purchase or receive such Excess MWh, and (ii) Seller shall have the right to sell all or any portion of the Product associated with the Excess MWh to one or more third parties and retain all resulting revenue. “**Annual Contract Quantity**” means the sum of all Hourly Settlement Quantity amounts for the applicable Contract Year.]  [*If Seller is not providing a shaped product:* If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than $0.00/MWh.]  If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred and fifteen percent (115%) of the Expected Energy for such Contract Year, no payment shall be owed by Buyer for any additional Facility Energy or Deemed Delivered Energy. |
| **Excess Energy:** | If during any settlement interval, the Delivered Energy is greater than the Guaranteed Capacity (“**Excess Energy**”), then the price paid by Buyer for the Excess Energy shall be Zero dollars ($0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point is negative for a settlement interval with Excess Energy, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy. |
| **Guaranteed Energy Production:** | Seller shall deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each two (2) consecutive Contract Year period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Energy, as measured in MWh, equal to the total aggregate Expected Energy for the applicable Performance Measurement Period multiplied by [eighty-five percent (85%) – *solar*][ seventy-five percent (75%) – *wind*].  For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Facility Energy for the applicable Performance Measurement Period, Seller shall be deemed to have delivered to Buyer (a) any Deemed Delivered Energy and (b) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events and Curtailment Periods (the “**Adjusted Energy Production**”).  If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer liquidated damages equal to (i) the difference between the Guaranteed Energy Production and the Adjusted Energy Production, multiplied by (ii) difference between (A) the replacement price for bundled Portfolio Content Category 1 renewable energy and RECs of the same vintage and resource and (B) the Contract Price. No payment shall be due if the calculation yields a negative number.  [*Note – Guaranteed Energy Production is not applicable for shaped product. However, if Seller fails to deliver shaped product in accordance with the Hourly Settlement Quantity, Seller shall be subject to damages equal to amount of the shortfall (in MWh) multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. “Replacement Price” shall be defined in the PPA and shall include the value of lost RECs.*] |
| **Performance Guarantee:** | The occurrence of any of the following shall constitute an Event of Default:if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the Expected Energy amount in any Contract Year; orif, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount in each Contract Year. |
| **Curtailment:** | In the event the Facility is curtailed due to a Force Majeure Event, by the CAISO or the transmission owner, or for any reason other than Buyer’s sole action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.  Buyer shall have the right to order Seller to curtail deliveries of Facility Energy, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with such Buyer-directed curtailments in excess of the Curtailment Cap at the Contract Price, subject to the Annual Excess Energy provisions. In addition, for new wind resources, during the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving PTCs, Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred percent (100%) of the Expected Energy for such Contract Year.  “**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.  “**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to a Buyer-directed curtailment, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer-directed curtailments.  *(Note: Sellers are requested to identify the cost impact, if any, of the Curtailment Cap on the Contract Price.)* |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Delivery Point:** | “**Delivery Point**” means the point of interconnection with the CAISO-Controlled Grid, [insert name or location]. |
| **Interconnection Point:** | The Facility shall interconnect to [*e.g., XX substation*] (the “**Interconnection Point**”). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. |
| **Settlement Point:** | If applicable, the Contract Price shall be subject to a Settlement Point adjustment. The “**Settlement Point**” shall be [*pNode/NP-15*]*.*  *(Note: Pricing is requested based on both the pNode and hub, which can be NP-15 or PG&E DLAP (TH\_NP15\_GEN-APND).* |
| **Expected Construction Start Date:** | Seller reasonably expects to achieve Construction Start by the following date: [\_\_\_\_\_\_\_] (the “**Expected Construction Start Date**”).  “**Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the site. |
| **Guaranteed Construction Start Date:** | The “**Guaranteed Construction Start Date**” means the Expected Construction Start Date, subject to extensions on a day-for-day basis due to a Force Majeure Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the “**Development Cure Period**”). For clarity, the permitted extensions under the Development Cure Period extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.  Notwithstanding anything to the contrary, no extension shall be given under the Development Cure Period if, and to the extent that (i) the delay was due to Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure Event, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice of such Force Majeure Event to Buyer as required under the PPA. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delay was the result of a Force Majeure Event and did not result from Seller’s actions or failure to take commercially reasonable actions.  In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer for each day of delay in the amount of the Development Security divided by 120 (“**Construction Delay Damages**”). The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.  Failure to achieve Construction Start for any reason within 120 days of the Guaranteed Construction Start Date, shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and receive a damage payment in the amount of the Development Security. |
| **Expected Commercial Operation Date:** | Seller reasonably expects to achieve Commercial Operation by the following date: [\_\_\_\_\_\_\_] (the “**Expected Commercial Operation Date**”). |
| **Guaranteed Commercial Operation Date:** | The “**Guaranteed Commercial Operation Date**” or “**Guaranteed COD**” means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis for the Development Cure Period.  If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to the Buyer for each day of delay until Seller achieves COD.  “**COD Delay Damages**” are equal to the Development Security divided by 60. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance.  Failure to achieve COD for any reason within 60 days of the Guaranteed COD, shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and receive a damage payment in the amount of the Development Security (“**Damage Payment**”). For the avoidance of doubt, Seller’s liability for an Event of Default comprising the failure to timely achieve COD shall equal the sum of any Construction Delay Damages and COD Delay Damages that are due and owing, plus the Damage Payment. |
| **Commercial Operation Date (“COD”):** | The COD shall be the later of (a) the Expected Commercial Operation Date or (b) the date when all of the following requirements have been met to Buyer’s reasonable satisfaction including Seller providing a certificate from an independent engineer to Buyer certifying to the following:   1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System. 2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity. 3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications. 4. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing. 5. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO. 6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner. 7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation. 8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff. 9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility.   Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date.  If Seller has not installed one hundred percent (100%) of the Guaranteed Capacity within one hundred twenty (120) days after the Commercial Operation Date, Seller shall pay Capacity Damages to Buyer for each MW that the Guaranteed Capacity exceeds the Guaranteed Capacity, and the Guaranteed Capacity and other applicable portions of the PPA shall be adjusted accordingly.  “**Capacity Damages**” means an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) per MW. |
| **Facility Development Milestones:** | * [*mm/dd/yyyy*]– Execute Interconnection Agreement * [*mm/dd/yyyy*] – Procure major equipment * [*mm/dd/yyyy*] – Obtain federal and state discretionary permits * [*mm/dd/yyyy*] – Expected Construction Start Date * [*mm/dd/yyyy*] – Obtain Full Capacity Deliverability Status * [*mm/dd/yyyy*]– Expected Commercial Operation Date |
| **Force Majeure:** | Note: this section omitted from Term Sheet. Seller to review pro forma agreement for full context. |
| **Site Control:** | Seller shall maintain site control throughout the Delivery Term. |
| **Permits and Approvals:** | Seller shall obtain any and all permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“**CEQA**”) or other environmental law, from the local jurisdiction where the Project is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Project. |
| **Operations and Maintenance:** | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent operating practice, or (iv) the Parties agree otherwise in writing. |
| **REC Tracking System:** | The Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in WREGIS Operating Rules.  Each Party shall be responsible for setting up an account with WREGIS. |
| **Resource Adequacy Failure:** | The Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status for the Facility in the amount equal to the Guaranteed RA Amount by the Commercial Operation Date, or if Seller otherwise fails to provide Resource Adequacy Benefits as required hereunder (or Replacement RA in lieu thereof), then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer, and as Buyer’s sole remedy, for the Capacity Attributes that Seller failed to convey to Buyer.  RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) Guaranteed RA Amount, minus (ii) the lowest amount of Facility Capacity eligible to be qualified as System RA and, if applicable, Local RA by both the CPUC and CAISO for such month (such difference, the “**RA Shortfall**”), multiplied by the sum of (a) the CPUC System RA Penalty and (b) the CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA up to the RA Shortfall, provided that notice of such Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form attached to the PPA at least seventy-five (75) days before the compliance deadline for the applicable CPUC operating month. **RA Change in Law**. Notwithstanding anything in this Agreement to the contrary, if, in any given month, following the Execution Date, a change in Laws occurs that results in or gives rise to a reduction in the maximum achievable Resource Adequacy Benefits that resources of the same type and operational characteristics as the Project are eligible to provide (including, without limitation, due to effective load carrying capability (ELCC) adjustments) (a “**RA Change in Law**”), thereby resulting in or giving rise to a reduction in the maximum achievable Net Qualifying Capacity of Buyer’s Portion of the Project, then (i) for the purposes of determining the Monthly Payment, no failure to deliver NQC or the Contract Amounts shall be deemed to have occurred, and (ii) the RA Shortfall for such month shall be equal to the difference between (x) the Contract Amount for RA Attributes and (y) the product of the Actual Monthly NQC and the CIL Adjustment Factor. For the purposes of this subsection, (i) the “**CIL Adjustment Factor**” means the Contract Amount for RA Attributes divided by the Reduced MNQC, and (ii) the “**Reduced MNQC**” means the new maximum achievable Net Qualifying Capacity of Buyer’s Portion of the Project, where the amount of Reduced MNQC shall be increased by the amount of Net Qualifying Capacity not delivered due to any Planned Outages that are otherwise permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of Buyer’s Portion of the Project. For the avoidance of doubt, the amount of Reduced MNQC shall be increased by the amount of Net Qualifying Capacity not delivered due to any CAISO or CPUC adjustments to the Net Qualifying Capacity of Buyer’s Portion of the Project, including any ELCC adjustments, that are generally applicable to resources of the same type as the Project. |
| **Credit Requirements:** | Seller shall post security as follows:  **Development Security** – $125/kW of Guaranteed Capacity  **Performance Security** – $105/kW of Guaranteed Capacity  To secure its obligations under this PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date.  Development Security shall be in the form of cash or a Letter of Credit.  To secure its obligations under this PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.  Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount. |
| **Metering/Shared Facilities:** | The Facility shall be separately metered from any other generation or storage facility and 100% of the output and services available from the Facility shall be conveyed to Buyer under the PPA.  Seller will provide and maintain at its sole expense separate metering and a separate CAISO resource ID for the Facility.  Seller may share interconnection facilities with affiliates owning other generation facilities, subject to commercially reasonable and customary shared facilities arrangements to be further described in the PPA; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) provide for separate metering and separate CAISO resource ID for the Facility. |
| **Business Tax (SJCE only):** | The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Delivery Term. |
| **Workforce & Community Investment Obligations:**  **(note: section required by EBCE; requested by SJCE)** | Seller must abide by any workforce and community investment obligation proposals included in its bid. Seller to provide commitments related to utilizing union workforce.  Seller commits to donating $\_\_\_\_\_\_ to EBCE’s Community Investment Fund. [EBCE required language for projects outside EBCE’s service territory] |
| **No Recourse to Members of EBCE:** | EBCE 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.) and is a public entity separate from its constituent members. EBCE will solely be responsible for all debts, obligations and liabilities accruing and arising out of the Agreement. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of EBCE's constituent members, or the officers, directors, advisors, contractors, consultants or employees of EBCE or EBCE's constituent members, in connection with the Agreement. |
| **City of San José Designated Fund and Limited Obligations:** | 1. Designated Fund. City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) City of San José has created and set aside a designated fund (the “Designated Fund”) for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy’s obligations, City of San José agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of City of San José’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. City of San José shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term. 2. Limited Obligations. City of San José’s payment obligations under the Agreement are special limited obligations of City of San José payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José. |
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| **Other Standard Contract Terms to be included in the PPA:** | Event of Default: Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the PPA, bankruptcy, assignment not permitted by the PPA, Seller failure to achieve Construction Start within one hundred twenty (120) days of the Guaranteed Construction Start Date, Seller failure to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, and other Events of Default expressly provided for in this Term Sheet.  Governing Law: State of California  Venue: [Alameda County] [Santa Clara County] |
| **Definitions:** | The following terms, when used herein with initial capitalization, shall have the meanings set forth below:  “**Bid**” has the meaning as set forth in the CAISO Tariff.  “**CAISO**” means the California Independent System Operator.  “**CAISO-Controlled Grid**” has the meaning set forth in the CAISO Tariff.  “**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.  “**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.  “**CEQA**” means the California Environmental Quality Act.  “**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.  “**Contract Year**” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.  “**Facility Energy**” means the energy generated by the Facility Energy during any Settlement Interval or Settlement Period, net of electrical losses and station use, as measured by the Facility meter, including adjustments in accordance with CAISO meter requirements to account for electrical losses and station use.  “**Full Capacity Deliverability Status**” has the meaning set forth in the CAISO Tariff.  “**Guaranteed Capacity**” means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, as the same may be adjusted pursuant to the PPA.  “**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a credit rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer.  “**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.  “**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.  “**Production Tax Credits**” or “**PTCs**” means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Generating Facility, is eligible.  “**PTC Amount**” means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility’s wind turbines that are eligible to receive Production Tax Credits at the time of determination.  “**San José Clean Energy**” is the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.  “**Scheduling Coordinator**” has the meaning set forth in the CAISO Tariff. |

1. **Additional Term Sheet Provisions.**
2. **No Obligation to Enter Into Proposed Transaction**. This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into a PPA with respect to the Proposed Transaction and does not obligate [EBCE/SJCE], Respondent or any party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Buyer nor Seller will be deemed to have agreed to the PPA or will be bound by any term thereof, unless and until authorized representatives of Buyer and Seller have executed final definitive documents, enforceable in accordance with their terms.
3. **Other Agreements**. In connection with this Term Sheet, Respondent shall execute that certain Exclusive Negotiating Agreement (“**Exclusive Negotiating Agreement**”) with [EBCE/SJCE] and provide a Shortlist Deposit (as defined in such agreement) in accordance with the Exclusive Negotiating Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusive Negotiating Agreement.
4. **Expenses**. Each of [EBCE/SJCE] and Respondent will pay its own costs and expenses (whether internal or out-of-pocket, and whether for legal, financial, technical or other consultants, or other purposes) in connection with the Term Sheet and any definitive agreements.
5. **Termination**. This Term Sheet will terminate upon the earlier of (a) execution of the PPA or (b) expiration of the Exclusivity Deadline (as defined in the Exclusive Negotiating Agreement), as such Exclusivity Deadline may be extended in accordance with the Exclusive Negotiating Agreement.
6. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
7. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between and among [EBCE/SJCE] and Respondent regarding the subject matter herein contemplated.
8. **Assignment**. This Term Sheet will be binding upon and inure to the benefit of [EBCE/SJCE] and Respondent and their respective successors and permitted assigns. Neither [EBCE/SJCE] nor Respondent will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other Party’s prior written consent (which consent will not be unreasonably withheld, delayed, or encumbered).
9. **No Consequential Damages**. IN NO EVENT SHALL [EBCE/SJCE] OR RESPONDENT OR ANY OF THEIR AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS TERM SHEET.

*[Signatures appear on the following page.]*

**Note: SJCE does not sign/countersign term sheets but does require Respondents to submit fully marked up files.**

**IN WITNESS WHEREOF**, EBCE and Respondent have by their duly authorized representatives executed this Term Sheet as of the Effective Date.

|  |  |
| --- | --- |
| **EAST BAY COMMUNITY ENERGY AUTHORITY,**  **a California joint powers authority** | **[SELLER]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |