Ava-SJCE 2024 Long-Term Resource RFO Attachment E.X

**Interconnection Process Enhancement Offtake Agreement Term Sheet – Renewables + Storage – Cluster 15**

This indicative term sheet (“**Term Sheet**”) is entered into as of \_\_\_\_\_, 2024 (the “**Effective Date**”) between [Ava Community Energy Authority, a California joint powers authority (“**Ava**”)] [City of San José, a California municipal corporation, doing business as San José Clean Energy (“**SJCE**”)] and [Respondent Name] (“**Respondent**”) in connection with the 2024 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 Interconnection Process Enhancement Offtake Agreement (“**IPE OA**”) between Seller and Buyer for the purchase and sale of the Product (the “**Proposed Transaction**”) from the Facility. Negotiation of the IPE OA 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 Respondent’s management, [Ava/SJCE] management and the [Ava 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. **IPE OA Terms and Conditions**.

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| **Seller:** | [Seller Name, e.g., Project Company LLC] |
| **Buyer:** | [Ava Community Energy Authority, a California joint powers authority] [City of San José, a California municipal corporation, doing business as San José Clean Energy] As used in the IPE OA, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.” |
| **Term:** | The IPE OA shall be effective from the Effective Date until the earlier of 1) execution of an Amended and Restated PPA, 2) an Early Termination pursuant to the terms of the IPE OA, or nine (9) years from the Effective Date. |
| **Description of Facility:** | A [XX] MW [e.g., solar photovoltaic, wind, geothermal, small hydro, etc.]project (the “**Generating Facility**”), and a battery energy storage facility as further described below (the “**Storage Facility**”), located in \_\_\_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_\_\_.  The Generating Facility and the [co-located][hybrid] Storage Facility are referred to herein as the “**Facility**.”  The Facility does not currently have an interconnection agreement and Seller is participating the CAISO Cluster 15 Generator Interconnection Process (“**Cluster 15**”) and seeking FCDS for the Facility in an amount equal to or greater than the [*as applicable,* [Contract Capacity][Guaranteed Capacity][Storage Contract Capacity]. |
| **Product:** | The “**Product**” shall meet the Portfolio Content Category 1 specifications, and includes all of the following:   1. Generating 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; and 5. Storage Capacity: All rights and products and attributes associated with the maximum dependable operating capability of the Storage Facility to be charged with, store and discharge electric energy.   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 Generating Facility has a guaranteed generating capacity of [XX] MW (the “**Guaranteed Capacity**”). |
| **Storage Contract Capacity:** | The Storage Facility will have an initial Storage Capacity of [[XX] MW for four (4) hour discharge] and [[XX] MW for eight (8) hour discharge] (the “**Storage Contract Capacity**”). |
| **RA Capacity:** | The Qualifying Capacity (QC) of the Facility. |
| **Interconnection Capacity**: | No later than the date that the Parties enter into the Amended and Restated PPA (as defined below), the Facility 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 an Amended and Restated PPA. |
| **Scheduling Coordinator:** | Buyer or Buyer’s agent shall act as Scheduling Coordinator for the Facility. |
| **Delivery Term:** | “**Delivery Term**” means [XX] Contract Years[[1]](#footnote-2). |
| **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 with a table.*] |
| **Renewable Rate:** | The “**Renewable Rate**” shall be expressed in $/MWh and established pursuant to the Seller Offer provisions below. |
| **Storage Rate:** | All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by 1,000, multiplied by the current Storage Contract Capacity, as adjusted for the Storage Capacity Test (as set forth in the Amended and Restated PPA), multiplied by the Round-Trip Efficiency Factor, and multiplied by the monthly Availability Adjustment for such month and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. In addition to adjustments pursuant to the Storage Capacity Test, the Storage Contract Capacity shall be reduced for each MW that is unavailable due to a Force Majeure Event lasting for more than five (5) consecutive days until such time as the Force Majeure Event ends for such Storage Capacity. If the Storage Contract Capacity is adjusted on any day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Storage Contract Capacity is applicable.  The “**Storage Rate**” shall be expressed in $/kW-month and established pursuant to the Seller Offer provisions below  The Storage Rate shall not be subject to an escalator and is based on a maximum number of 365 cycles per Contract Year.  [Note: *Sellers may offer a price for 450 cycles per Contract Year. Seller may also offer a price for a top 4/bottom 4 approach in which case capacity products will be limited to Resource Adequacy and top 4/bottom 4 financial settlement.*] |
| **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, at any point in any Contract Year, the amount of Generating 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 Generating 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 Renewable Rate, but not less than $0.00/MWh.  If, at any point in any Contract Year, the amount of Generating 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 Generating 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. |
| **Seller Exclusivity:** | Seller shall negotiate exclusively with Buyer for the sale of product associated with the Guaranteed Capacity and Storage Contract Capacity of the Facility (i.e., the Contract Capacity), including any portion thereof, and shall not discuss or negotiate any potential agreement, in any form, for the right to any product derived from, attributed to, or produced by the Contract Capacity, or any portion thereof, with any third party, except as provided pursuant to the IPE OA (“**Seller Exclusivity**”). The Seller Exclusivity obligation commences on the IPE OA Effective Date and, except as provided below, continues through the termination of the IPE OA. |
| **Seller Obligation to Provide Updated Offer Following Interconnection Milestone:** | Seller grants Buyer an exclusive right of first offer to any product derived from, attributed to, or produced by the Contract Capacity, or any portion thereof, under the IPE OA.   1. Seller shall provide written notice to Buyer within thirty (30) days of the earlier of (i) Seller (or its affiliate’s) execution of an interconnection agreement for all or part of the Contract Capacity, and (ii) all or a portion of the Contract Capacity has received a deliverability allocation from the CAISO Transmission Plan Deliverability allocation process for Queue Cluster 15 or successor process (either, a “**Interconnection Milestone**”). Within thirty (30) days of such notice of Interconnection Milestone, Seller must provide Buyer with at least one binding written offer to sell Product associated with such Contract Capacity to Buyer (the “**Offer**”). If the Interconnection Milestone is achieved for less than one hundred percent (100%) of the Contract Capacity, Seller’s obligation to make an Offer to Buyer shall apply only to such portion of the Contract Capacity that has achieved the Interconnection Milestone. 2. Seller’s Offer shall include, as applicable, an updated Renewable Rate, Storage Rate, and updated Expected Construction Start Date and Expected Commercial Operation Date based on the CAISO/Participating Transmission Owner interconnection schedule, and any other proposed terms and conditions necessary in Seller’s reasonable discretion to finance and construct the Facility. The Offer shall include Seller’s proposed contract language for any additional terms and conditions and shall be presented to Buyer in the form of a proposed contract amendment to this Agreement or an amended and restated version of this Agreement (collectively, the “**Amended and Restated PPA**”). 3. Buyer shall deliver a written notice to Seller within thirty (30) days of Buyer’s receipt of the Offer to either (i) reject the Offer in its entirety, (ii) accept the Offer in its entirety, or (iii) accept the Offer subject to additional modifications, including additional terms and conditions (“**Buyer’s Notice**”). Buyer may accept or reject the Offer with respect to all or any portion of the Contract Capacity achieving the Interconnection Milestone. Buyer’s failure to deliver Buyer’s written notice within such time period will be deemed a rejection of the Offer. If Buyer accepts the Offer pursuant to the foregoing clauses (ii) or (iii) and in the case of an acceptance pursuant to clause (iii), Seller does not reject Buyer’s additional modifications by written notice to Buyer within fifteen (15) Business Days of receipt of Buyer’s written notice), the acceptance shall be subject to negotiation (to the extent necessary), and finalization of the Amended and Restated PPA by both Parties within ninety (90) days after Buyer’s acceptance of the Offer. The negotiating period shall be extended automatically if the Parties are continuing to negotiate in good faith with respect to the Offer. The Parties shall have an additional sixty (60) days after fully negotiating an Amended and Restated PPA to obtain approval of the Amended and Restated PPA from their respective governing boards and to execute the Amended and Restated PPA. 4. In the event that (i) Buyer rejects or is deemed to reject the Offer, (ii) Buyer accepts the Offer subject to additional modifications and Seller rejects such additional modifications by written notice to Buyer within fifteen (15) Business Days of receipt of Buyer’s written notice, or (iii) the Parties fail to execute an Amended and Restated PPA within one hundred and fifty (1500) days after Buyer’s acceptance of the Offer (subject to an automatic extension if the Parties are continuing to negotiate in good faith), Seller may, in its commercially reasonable discretion, market, sell, or enter into transaction with third parties for a portion or all of the Product related to the Contract Capacity that has achieved the Interconnection Milestone on terms and conditions that are materially no more favorable than the Offer provided to Buyer (“**Suspension of Seller Exclusivity**”). For the avoidance of doubt, in the case Buyer accepts a portion of the Contract Capacity, Suspension of Seller Exclusivity shall apply to the portion of the Contract Capacity not accepted by Buyer in Buyer’s written notice. 5. In order to facilitate robust negotiation, there shall be no limit on the number of Offers that Seller can provide to Buyer. Upon Seller providing subsequent Offer(s) following a rejection of the first Offer, Seller Exclusivity is reinstated and in effect through the earlier of (i) execution of the Amended and Restated PPA if the Parties mutually agree on terms, (ii) renewed Suspension of Seller Exclusivity, or (iii) termination of the IPE OA. |
| **Early Termination//Seller ROFO Obligations:** | **Early Termination** .   * + 1. Effective upon written notice from either Party, which shall be effective upon receipt by the other Party, the IPE OA shall terminate upon the occurrence of one or more of the following events:        1. If the Facility is not selected for study or otherwise does not advance to Phase 1, provided that such termination shall only be effective with respect to the affected portion of the Contract Capacity;        2. If the Facility advances to Phase 1, but does not advance to Phase 2, provided that such termination shall only be effective with respect to the affected portion of the Contract Capacity;        3. If the Facility advances to Phase 2, but Seller withdraws the the Contract Capacity from the interconnection study or voluntarily fails to proceed in the study process for any reason;        4. If the Parties fail to execute an Amended and Restated PPA by two years after the Contract Capacity received or was denied a deliverability allocation from the CAISO Transmission Plan Deliverability allocation process for Queue Cluster 15 or successor process, provided that such termination shall only be effective with respect to the affected portion of the Contract Capacity; and        5. If Seller executes a binding agreement to sell Product from all or a portion of the Contract Capacity to a third party in violation of the Sellers ROFO Obligation; provided that, for the avoidance of doubt, this Agreement shall only terminate with respect to that portion of the Contract Capacity contracted with such third party.        6. If Seller executes a binding agreement to sell Product from all or a portion of the Contract Capacity to a third party during a period of Suspension of Seller Exclusivity without violating of the Sellers ROFO Obligation; provided that, for the avoidance of doubt, this Agreement shall only terminate with respect to that portion of the Contract Capacity contracted with such third party.     2. Upon termination of the IPE OA (or any portion thereof) pursuant to the foregoing Early Termination provisions, Buyer shall be entitled to retain the following amounts from the Initial Development Security:        1. If the IPE OA terminates pursuant to (a)(i), Buyer shall return the Initial Development Security to Seller, unless the Facility was selected for study by the CAISO but the Seller determined not to proceed with such study in which case Buyer shall be entitled to retain from the Initial Development Security an amount equal to $5/kW times the amount of terminated Contract Capacity;        2. If the IPE OA terminates pursuant to (a)(ii), Buyer shall be entitled to retain from the Initial Development Security an amount equal to $5/kW times the amount of terminated Contract Capacity, and the remainder of the Initial Development Security for such terminated Contract Capacity shall be returned to Seller;        3. If the IPE OA terminates pursuant to (a)(iii), Buyer shall be entitled to retain from the Initial Development Security an amount equal to $15/kW times the amount of terminated Contract Capacity, and the remainder of the Initial Development Security for such terminated Contract Capacity shall be returned to Seller;If the IPE OA terminates pursuant to (a)(iv) or (a)(v), Buyer shall be entitled to retain from the Initial Development Security an amount equal to $25/kW times the amount of terminated Contract Capacity, unless (a)(iv) applies and the Facility did not receive deliverability in which case Buyer shall be entitled to retain from the Initial Development Security an amount equal to $15/kW times the amount of terminated Contract Capacity, and the remainder of the Initial Development Security for such terminated Contract Capacity shall be returned to Seller;        4. If the IPE OA terminates pursuant to (a)(vi), Buyer shall return the Initial Development Security to Seller.     3. Within thirty (30) days of written notice of termination pursuant to Section (a)(i-v), as applicable, Buyer shall return any portion of the Initial Development Security then due to Seller, if any, subject to any amounts drawn in accordance with the IPE OA. Subject to Buyer’s obligation to return the Initial Development Security as provided herein, the IPE OA shall terminate, and neither Party shall have any further liability or obligation under this Agreement, except under any provisions of the IPE OA that expressly survive termination.  **Seller ROFO Obligations** . Seller shall not enter into any Non-Merchant Agreement to sell any Product produced by Contract Capacity, or any portion thereof, to any third party within twenty-four months (24) months after the date on which the Contract Capacity received or was denied a deliverability allocation from the CAISO Transmission Plan Deliverability allocation process for Queue Cluster 15 or successor without first having provided written notice to Buyer of an offer to purchase such Product (a “**ROFO Offer**”)(the “**ROFO Obligation**”). Buyer shall have thirty (30) days to consider and respond to such ROFO Offer (the “**ROFO Exercise Period**”). If Buyer provides notice to Seller accepting the ROFO Offer within the ROFO Exercise Period, then the Parties shall negotiate in good faith to enter into a binding agreement (the “**ROFO Agreement**”), within ninety (90) days after Seller’s receipt of Buyer’s notice of acceptance (the “**ROFO Negotiation Period**”), for purchase and sale of such Product in accordance with the price and non-price commercial terms of the ROFO Offer and otherwise substantially in the form of the IPE OA. If Buyer does not provide notice accepting the ROFO Offer within the ROFO Exercise Period, or if the Parties fail to enter into the ROFO Agreement within the ROFO Negotiation Period, then Seller shall have the right to enter into any Non-Merchant Agreement on terms and conditions that are materially no more favorable than the ROFO Offer provided to Buyer. “**Non-Merchant Agreement**” means any agreement to sell any Product from the Facility, each as applicable, for a delivery term that is longer than six (6) months. |
| **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 Generating 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 (a) the difference between the Guaranteed Energy Production and the Adjusted Energy Production, multiplied by (b) the difference between (i) the sum of (A) the replacement price for the Performance Measurement Period, in $/MWh, which is the sum of the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (B) the market value of Replacement Green Attributes generated by the Facility during the Performance Measurement Period, as determined by Buyer in a commercially reasonable manner, and (ii) the Renewable Rate. No payment shall be due if the calculation yields a negative number. |
| **Performance Guarantee:** | The occurrence of any of the following shall constitute an Event of Default:if, in any two consecutive Contract Years during the Delivery Term, the average Monthly Storage Availability over the two-year period is less than seventy percent (70%);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;if, 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;if, Seller fails to maintain an average Actual Round-Trip Efficiency of at least seventy percent (70%) over a rolling 12-month period; orif, Seller fails to maintain a Storage Capacity equal to at least seventy-five percent (75%) of the Storage Contract Capacity for longer than three hundred sixty (360) days. |
| **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 Generating 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 Renewable Rate, subject to the Annual Excess Energy provisions.  In addition, if the Parties have agreed that Seller is entitled to the PTC Amount, and the PTC is applicable to the Facility, 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 Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating 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. |
| **Maximum Storage Level:** | [XX] MWh [number in MWh representing maximum amount of energy that may be discharged from the Storage Facility] |
| **Minimum Storage Level:** | [XX] MWh [number in MWh representing the lowest level to which the Storage Facility may be discharged] |
| **Maximum Charging Capacity:** | [XX] MW [number in MW representing the highest level to which the Storage Facility may be charged] |
| **Minimum Charging Capacity:** | [XX] MW [number in MW representing the lowest level at which the Storage Facility may be charged] |
| **Maximum Discharging Capacity:** | [XX] MW [number in MW representing the highest level at which the Storage Facility may be discharged] |
| **Minimum Discharging Capacity:** | [XX] MW [number in MW representing the lowest level at which the Storage Facility may be discharged] |
| **Maximum State of Charge (SOC) during Charging:** | [100]% |
| **Minimum State of Charge (SOC) during Discharging:** | [0]% |
| **Guaranteed Round-Trip Efficiency:** | |  |  | | --- | --- | | **Contract Year** | **Guaranteed Round-Trip Efficiency** | | 1 | 88.0% | | 2 – XX | [*Seller to fill out rest of table*] |   Liquidated Damages for Failure to Achieve Guaranteed Round-Trip Efficiency Rate: If during any month during the Delivery Term, the Actual Round-Trip Efficiency for such month is less than the Guaranteed Round-Trip Efficiency, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, by (iii) the Renewable Rate, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice; provided, however, that no liquidated damages shall be payable under this provision if the Round-Trip Efficiency Factor for such month is zero percent (0%). |
| **Minimum Round-Trip Efficiency:** | [70]% |
| **Ramp Rate:** | The Storage Facility shall have the ability to discharge at the Maximum Discharging Capacity in two seconds. |
| **Daily Dispatch Limits:** | 365 full cycles per Contract Year |
| **Maximum Time at Minimum Storage Level:** | [Seller-specified, if applicable] |
| **Grid Charging of Storage Facility:** | The Storage Facility is capable of receiving charging energy from the Generating Facility and in the form of grid energy. Buyer will be responsible for the cost of all grid energy used to charge the Storage Facility. |
| **Other Operating Limits:** | [Seller-specified, if applicable] |
| **Ancillary Services Capability:** | The Facility shall be able to provide the full suite of ancillary services in CAISO markets and Seller will dispatch the Facility in response to signals from the Buyer/scheduler, subject to the Operating Parameters. These services include Frequency Regulation, Spinning Reserve, Ramp Support, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction. Upon Buyer’s reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification. |
| **Station Use:** | Seller will be responsible for all providing station power and station use power will not be provided by the Generating Facility or the Storage Facility. |
| **Guaranteed Storage Availability:** | Ninety-eight percent (98%) |
| **Availability Adjustment:** | If the Monthly Storage Availability (as defined in the Amended and Restated PPA) during any month is less than the Guaranteed Storage Availability, Buyer’s payment for the Storage Product shall be calculated by the Availability Adjustment (“**Availability Adjustment**” or “**AA**”), which is calculated as follows:   1. If the monthly storage availability is greater than or equal to the Guaranteed Storage Availability, then:   AA = 100%   1. If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:   AA = 100% - [(98% - monthly storage availability) × 2]   1. If the monthly storage availability is less than 70%, then:   AA = 0 |
| **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 Renewable Rate 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 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 Amended and Restated 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 Amended and Restated PPA and receive a damage payment in the amount of the Development Security (the “**Damage Payment**”). |
| **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 Amended and Restated PPA and receive the 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. |
| **Progress Reporting/Remedial Action Plan:** | Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the IPE OA and the Amended and Restated PPA Effective Date until the Expected Construction Start Date, and (b) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled telephonic or video-conferenced meetings (unless otherwise agreed to by the Parties) between representatives of Buyer and Seller to review such quarterly or monthly reports and discuss Seller’s construction progress; provided, that if Seller misses the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date, Seller shall provide updated Progress Reports to Buyer on a weekly basis, or as otherwise agreed. Details regarding the form and content of the Progress Report will be attached to the IPE OA and the Amended and Restated PPA as an exhibit. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.  If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event, or Buyer Event of Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the date sixty (60) days after the Guaranteed Commercial Operation Date (including any extension thereof); provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of the Amended and Restated PPA. |
| **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 Generating Facility and the Storage Facility are fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System. 2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity. 3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity. 4. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications. 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 Amended and Restated PPA and/or the CAISO. 6. The Generating 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 Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing. 7. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions. 8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner. 9. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation. 10. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff. 11. The CAISO has provided notification supporting that the Facility has achieved Full Capacity Deliverability Status. 12. Seller shall have caused the Generating Facility and the Storage 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 each of the Generating Facility and Storage 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 Amended and Restated PPA shall be adjusted accordingly.  If Seller has not installed one hundred percent (100%) of the Storage Contract Capacity within one hundred twenty (120) days after the Commercial Operation Date, Seller shall pay Capacity Damages to Buyer for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Amended and Restated PPA shall be adjusted accordingly.  “**Capacity Damages**” means an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) per MW.  The Delivery Term shall not commence until Seller completes each of the following conditions:   * + 1. Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.;     2. All applicable permits and government approvals required for the operation of the Facility have been obtained;     3. Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status;     4. Seller has delivered the Performance Security to Buyer; and     5. Seller has paid Buyer all amounts owing under the Amended and Restated PPA as of such date, if any. |
| **Facility Development Milestones:** | * [*mm/dd/yyyy*] - Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities * [*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 IPE OA 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 Facility is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Facility. |
| **Operations and Maintenance:** | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the Energy generation or storage capability 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.  Seller shall not replace existing batteries unless for critical maintenance purposes or increase the capacity of the Storage Facility without the prior consent of Buyer. |
| **Storage Operations and Maintenance:** | Buyer shall at all times retain operational control of the Storage Facility and be responsible for dispatching and coordinating charging of the Storage Facility. Seller shall at all times retain all other aspects of operation and maintenance of the Storage Facility in accordance with prudent operating practice and applicable law and adhering to all operational data, interconnection and telemetry requirements applicable to the Storage Facility. |
| **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:** | For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amoun**t”) which shall be equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (A) the CPUC System RA Penalty and (B) the CPM Soft Offer Cap.  As used above:  “**Administrative NQC Reduction**” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to a reduction that has been generally applied to resources materially similar to the Facility in terms of generating technology and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates.  “**CPM Soft Offer Cap**” has the meaning set forth in the CAISO Tariff.  “**CPUC System RA Penalty**” means the Tier 1 System RA Penalties assessed against LSEs by the CPUC for RA deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against LSEs for RA deficiencies.  “**Deemed Delivered RA**” means for each hour of the Relevant Day in the applicable Showing Month the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) a Force Majeure Event, and (ii) Planned Outages permitted by the terms of the Amended and Restated PPA to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility.  “**Delivered RA**” means for each hour of the Relevant Day in the applicable Showing Month the sum of (a) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan to the CAISO and CPUC and counted as Resource Adequacy Capacity by both the CAISO and CPUC, (b) Deemed Delivered RA and (c) Replacement RA.  “**Guaranteed RA Amount**” means the Qualifying Capacity *minus* Administrative NQC Reductions for each hour of the Relevant Day in the applicable Showing Month.  “**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (A) the CPUC System RA Penalty and (B) the CPM Soft Offer Cap.  “**RA Shortfall Amount**” shall be determined by first, calculating the difference of the Guaranteed RA Amount *minus* the Delivered RA for each hour of the Relevant Day in the applicable Showing Month and, second, selecting the highest hourly difference for any hour of the Relevant Day in the applicable Showing Month as determined pursuant to step one of this calculation, which such highest hourly value shall be the “RA Shortfall Amount” for purposes of calculating an RA Deficiency Amount for such Showing Month; provided, if the CPUC adopts another methodology for calculating a load serving entity’s procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero MW for such Showing Month.  “**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount, any month commencing after the Commercial Operation Date during which there is an RA Shortfall Amount.  “**Replacement RA**” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in all respects, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits. |
| **Credit Requirements:** | Seller shall post security as follows:  **Initial Development Security** – $25/kW of Contract Capacity within thirty (30) days of the IPE OA Effective Date.  **Development Security** – $125/kW of Contract Capacity within thirty (30) days of the Effective Date of the Amended and Restated PPA.  **Performance Security** – $105/kW of Contract Capacity  “**Contract Capacity**” means the sum of the Guaranteed Capacity and the Storage Contract Capacity.  To secure its obligations under the Amended and Restated PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date of the Amended and Restated PPA.  Development Security shall be in the form of cash or a Letter of Credit.  To secure its obligations under the Amended and Restated 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 Amended and Restated PPA.  Seller will provide and maintain at its sole expense separate metering and separate CAISO resource IDs for [the Facility *– hybrid*] [each of the Generating Facility and Storage Facility *– if co-located*].  Seller may share interconnection facilities with affiliates owning other generation or storage facilities, subject to commercially reasonable and customary shared facilities arrangements to be further described in the Amended and Restated 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) continue to provide for separate metering and separate CAISO resource IDs for [the Facility *– hybrid*] [each of the Generating Facility and Storage Facility *– if co-located*]. |
| **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 Ava; 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.  [For Ava: Seller shall donate $\_\_\_\_\_\_\_\_\_\_\_\_ to Ava’s Community Investment Fund, with fifty percent (50%) due within sixty (60) days after the Effective Date of the Amended and Restated PPA, and fifty percent (50%) due on or before the Guaranteed Construction Start Date.] [Ava required language for projects outside Ava’s service territory] |
| **No Recourse to Members of Ava:** | Ava 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. Ava will solely be responsible for all debts, obligations and liabilities accruing and arising out of the IPE OA and the Amended and Restated PPA. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Ava's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Ava or Ava's constituent members, in connection with the IPE OA and the Amended and Restated PPA. |
| **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 Energy Department or the City of San José. |
| **Purchase Option** | Seller hereby grants Buyer the exclusive right, but not the obligation, to purchase the Facility at a price equal to the fair market value of the Facility determined in a commercially reasonable manner by a Third-Party Independent Evaluator, as defined below (the “Purchase Option”).  All costs related to the appraisal shall be borne by Seller.  The Purchase Option may be exercised by Buyer by delivering notice to Seller at least twelve (12) months prior to the end of the Delivery Term, with closing to occur on the day after the last day of the Delivery Term. |
| **Other Standard Contract Terms to be included in the IPE OA and the Amended and Restated 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 IPE OA and the Amended and Restated PPA, bankruptcy, assignment not permitted by the IPE OA and the Amended and Restated 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.  “**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.  “**CEQA**” means the California Environmental Quality Act.  “**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 sum of Generating Facility Energy and discharging energy from the Storage Facility during any Settlement Interval or Settlement Period, net of electrical losses and station use, as measured by the Facility meter, which will be adjusted 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.  “**Generating Facility Energy**” means that portion of energy that is delivered from the Generating Facility directly to the Delivery Point, net of electrical losses.  “**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 Amended and Restated 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 and having assets of at least $10 Billion 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 portion of the Facility that is eligible to receive Production Tax Credits at the time of determination.  “**Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.  “**Round-Trip Efficiency Factor**” means (a) if the Actual Round-Trip Efficiency is greater than or equal to the Minimum Round-Trip Efficiency, one hundred percent (100%), or (b) if the Actual Round-Trip Efficiency is less than the Minimum Round-Trip Efficiency, zero percent (0%).  “**San José Clean Energy**” is the City of San José’s community choice aggregation program. The San José Energy Department administers and manages San José Clean Energy.  “**Scheduling Coordinator**” has the meaning set forth in the CAISO Tariff.  “**Third-Party Independent Evaluator**” means a qualified professional experienced in the appraisal of facilities similar to the Facility, with selection mutually agreed by the Parties or absent such agreement, a qualified professional experienced in the appraisal of facilities similar to the Facility with selection mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties. |

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 an IPE OA or an Amended and Restated PPA with respect to the Proposed Transaction and does not obligate [Ava/SJCE], Respondent or any party to enter into the Proposed Transaction or execute any agreement, including an IPE OA or an Amended and Restated PPA, in connection with the Proposed Transaction. Neither Buyer nor Seller will be deemed to have agreed to an IPE OA or an Amended and Restated 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 [Ava/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 [Ava/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 IPE OA 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 [Ava/SJCE] and Respondent regarding the subject matter herein contemplated.
8. **Assignment**. This Term Sheet will be binding upon and inure to the benefit of [Ava/SJCE] and Respondent and their respective successors and permitted assigns. Neither [Ava/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 [Ava/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**, Ava and Respondent have by their duly authorized representatives executed this Term Sheet as of the Effective Date.

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| **[AVA COMMUNITY ENERGY AUTHORITY,**  **a California joint powers authority** | **[RESPONDENT]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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1. Note that Contract Years begin on January 1st and continue 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. [↑](#footnote-ref-2)