Ava-SJCE 2024 Long-Term Resource RFO Attachment E.3

**Energy Storage Agreement Term Sheet – Stand-alone Storage**

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 [Seller Name] (“**Seller**” or “**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 energy storage agreement (“**ESA**”) between Seller and Buyer for the purchase and sale of the Product (the “**Proposed Transaction**”) from the Facility. Negotiation of the ESA 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]’s 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. **ESA 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] (“**Buyer**”). As used in the ESA, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.” | |
| **Description of Facility:** | A [\_\_\_\_] MW / [\_\_] MWh grid-connected [*insert description of storage technology here*] energy storage facility (the “**Facility**”), located in [\_\_\_\_\_\_] County, in the State of California. | |
| **Product:** | “**Product**” means energy tolling service, along with resource adequacy, other capacity and storage attributes, and ancillary services based upon Seller’s maintenance of the Facility in accordance with the operating parameters set forth on attached Exhibit A (“**Operating Parameters**”).  For clarity, during the Delivery Term Seller may not use the Facility to provide services or attributes to any third party. | |
| **Storage Contract Capacity:** | The Facility will have an initial Storage Capacity of [[XX] MW for four (4) hour discharge] [[XX] MW for eight (8) hour discharge] (the “**Storage Contract Capacity**”). | |
| **Storage Degradation Schedule:** | If applicable, the Storage Contract Capacity of {XX} MW will degrade in accordance to the following annual schedule:   |  |  | | --- | --- | | Contract Year 1 |  | | Contract Year 2 |  | | Contract Year 3 |  | | Contract Year 4 |  | | … |  | | |
| **RA Capacity:** | The Qualifying Capacity (QC) of the Facility, which is [XX] MW.  [*If there is an annual adjustment for degradation, this should be noted with a table.*] | |
| **Interconnection:** | The Facility shall interconnect to [\_\_\_\_\_\_\_\_\_\_\_] (the “**Interconnection Point**”). 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 Storage Contract Capacity.  Seller shall ensure that, during 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 ESA. | |
| **Storage Rate, Tolling Rate and Monthly Payment:** | All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by 1,000, multiplied by the current Storage Capacity, as adjusted for the most recent Storage Capacity Test (as set forth in the ESA), 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 [[XX]/kW-month]. The Storage Rate shall not be subject to an escalator and is based on a maximum number of [365/465] 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.]* | |
| **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, 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 Contract Capacity equal to at least seventy-five percent (75%) of the initial Storage Contract Capacity for longer than three hundred sixty (360) days. | |
| **Monthly Settlement and Invoice:** | Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due.  Payment for undisputed amounts shall be due to the applicable Party thirty (30) days from the invoice date, with disputed payments subject to Buyer’s billing dispute process. | |
| **Charging Energy:** | Buyer is solely responsible, at Buyer’s sole cost, for procuring Charging Energy. | |
| **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)  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 completed CAISO Certification of the Facility, and a copy of the CAISO Certification has been delivered to Buyer;     4. Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status;     5. Seller has delivered the Performance Security to Buyer; and     6. Seller has paid Buyer all amounts owing under the ESA as of such date, if any. | |
| **Operations and Maintenance:** | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the Storage Capacity 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 Facility without the prior consent of Buyer. | |
| **Storage Operations and Maintenance:** | Buyer shall at all times retain operational control of the Facility and be responsible for dispatching and coordinating charging of the Facility. Seller shall at all times retain all other aspects of operation and maintenance of the Facility in accordance with prudent operating practice and applicable law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility. | |
| **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 ESA 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.  “**Relevant Day**” means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Requirements.  “**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. | |
| **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. | |
| **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 ESA. 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 Construction Start on or before 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 ESA and receive a damage payment in the amount of the Development Security (the “**Damage Payment**”). |
| **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 |
| **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 (such period of days, the “**Development Cure Period**”).  “**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 ESA 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 ESA 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 ESA 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 this ESA. |
| **Credit Requirements:** | Seller shall post security as follows:  **Development Security** – $125/kW of Storage Contract Capacity  **Performance Security** – $105/kW of Storage Contract Capacity  To secure its obligations under this ESA, 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 ESA, 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 ESA.  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 or storage facilities, subject to commercially reasonable and customary shared facilities arrangements to be further described in the ESA; *provided* that such agreements 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 Storage Contract Capacity. |
| **Guaranteed Storage Availability:** | Ninety-eight percent (98%) |
| **Availability Adjustment:** | If the Monthly Storage Availability (as defined in the ESA) during any month is less than the Guaranteed Storage Availability, Buyer’s payment for the Storage Product shall be calculated by the “**Availability Adjustment**” or “**AA**” 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) x 2]   1. If the Monthly Storage Availability is less than 70%, then:   AA = 0 |
| **Station Use:** | Seller will be responsible for all providing station power and station use power will not be provided by the Facility. |
| **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 ESA, 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 ESA. 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 ESA. |
| **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 ESA shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the ESA; 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 ESA 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 the ESA 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 ESA 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. |
| **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 Facility is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Facility. |
| **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 ESA:** | 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 ESA, bankruptcy, assignment not permitted by the ESA, 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:  **“Battery Energy Storage System”** or **“BESS”** meansthe Energy Management Software and related storage equipment including but not limited to transformers, batteries, fire suppression, thermal management, enclosures, and inverters.  “**CAISO**” means the California Independent System Operator.  “**CAISO Certification**” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all applicable Ancillary Services, PMAX, and PMIN.  “**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.  “**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.  “**Full Capacity Deliverability Status**” has the meaning set forth in the CAISO Tariff.  “**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, having assets of at least $10 Billion, with such bank having a credit rating of at least A-” from S&P or A3 from Moody’s.  “**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.  “**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 ESA 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 the ESA, in connection with the Proposed Transaction. Neither Buyer nor Seller will be deemed to have agreed to the ESA 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 ESA 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.

**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** | | **[SELLER]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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[*Exhibit A follows this page*]

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**EXHIBIT A**

**Operating Parameters**

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| **Maximum Storage Level:** | [XX] MWh [number in MWh representing maximum amount of energy that may be charged] |
| **Minimum Storage Level:** | 0 MWh [number in MWh representing the lowest level to which the Facility may be discharged] |
| **Maximum Charging Capacity:** | [\_\_\_] MW [based on final system configuration, number in MW representing the highest level to which the Facility may be charged] |
| **Minimum Charging Capacity:** | 0.01 MW [number in MW representing the lowest level at which the Facility may be charged] |
| **Maximum Discharging Capacity:** | [\_\_\_] MW [based on final system configuration, number in MW representing the highest level at which the Facility may be discharged] |
| **Minimum Discharging Capacity:** | 0.01 MW [number in MW representing the lowest level at which the 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 simple average of the Day-Ahead Market locational marginal price for all the hours of the applicable month, as published by the CAISO, for the Delivery Point, 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 Facility shall have the ability to discharge at Maximum Discharging Capacity in two seconds. |
| **Response Time:** | The BESS shall execute the commanded power within one (1) second. |
| **Cycles or Throughput:** | [TBD based on final configuration and OEM warranties, likely to be an annual battery energy throughput (BET) limit equal to approximately 1 cycle per day but providing buyer with more daily flexibility] |
| **Daily Dispatch Limits:** | 365 full cycles per Contract Year |
| **Maximum Time at Minimum Storage Level:** | [Seller-specified, if applicable] |
| **Energy Management Software:** | Seller must provide remotely operable, 2-4 second timestamps, data historian (at least 5 years of storage), SCADA/AGC communication and operability.  Applications/Modes:   * Dynamic Voltage Support * Shifting * Regulation * Flexible Ramp Spinning Reserve * ITC Compliance if applicable |
| **Other Operating Limits:** | [Seller-specified, if applicable] |

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)