# Proforma Term Sheet

THIS TERM SHEET (“**Term Sheet**”) includes the key commercial terms and conditions to be included in a proposed power purchase agreement (“**PPA**”) to be negotiated between California Community Power, a California joint powers authority (“**Buyer**”) and [*e.g., Project Company LLC*] [*state and type of corporate formation*] (“**Seller**”) (the “**Proposed Transaction**”). As used herein, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.” Notwithstanding anything herein to the contrary, until a definitive agreement is approved by Buyer and signed and delivered by each Buyer and Seller, no Party shall have any legal obligations, expressed or implied, or arising in any other manner under this Term Sheet to continue negotiations or enter into the Proposed Transaction or the PPA. Capitalized terms that are not defined in the Term Sheet will be defined in the PPA.

1. **PPA Terms and Conditions**.

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| **Product:** | The “**Product**” shall meet all Firm Clean Resources specifications (as defined below). The Product includes all of the following:   1. Delivered Energy: All of the electric energy generated by the Facility, delivered to the Delivery Point as measured by CAISO-approved meters, net of losses and station load, pursuant to the Scheduling Requirements; 2. Environmental Attributes: All renewable energy credits (“**RECs**”) and any other environmental attributes associated with Delivered Energy; 3. Capacity Attributes: All capacity rights, including resource adequacy benefits, associated with the Facility; and 4. Other attributes: All products and other attributes, if any, that may be obtained from the Facility. |
| **Firm Clean Resource (FCR)** | “**Firm Clean Resource**” or “**FCR**” means a resource that meets the requirements of CPUC D.21-06-035 including those set forth in Ordering Paragraph 2.(b).  An FCR must have at least (1) an 80 percent capacity factor and (2) zero on-site emissions or it must otherwise qualify under the California Renewable Portfolio Standard (RPS) program eligibility rules as PCC1. An FCR must be incremental to the CPUC’s baseline list. An FCR must also meet minimum California Public Utilities Commission and CAISO requirements for participation in the Resource Adequacy program.  Specifications for PCC 1 are described in California Public Utilities Code §399.16(b)(1), California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders. |
| **Facility:** | “**Facility**” or “**Project**” means the [\_\_\_] project, located in [County], in the State of [California]. |
| **Guaranteed Capacity:** | The Facility has a guaranteed nameplate capacity of [XX] MW (the “**Guaranteed Capacity**”). |
| **RA Capacity:** | The Net Qualifying Capacity (NQC) of the Facility is [XX] MW (the “**Guaranteed RA Amount**”). |
| **Interconnection Capacity** | The Facility has [XX] MW of dedicated interconnection capacity reserved for the delivery of Delivered Energy to the Delivery Point. If the Facility is not located within the CAISO Balancing Authority, the Seller has demonstrated it has the ability to interconnect to the host transmission service provider and has secured a reservation of transmission to an intertie point with the CAISO. |
| **Contract Price:** | * For all Non Capacity Attributes: [XX] $/MWh with no escalation. * For all Capacity Attributes: [XX] $/kW-month of kW NQC with no escalation.   [If the Seller will be the SC, the $/MWh Contract Price will be settled as the difference between the Contract Price and the DA LMP.] |
| **Delivery Term:** | [\_\_\_] Contract Years from the Commercial Operation Date, with each 12-month period following the Commercial Operation Date considered a “**Contract Year**.” |
| **Expected Energy:** | “**Expected Energy**” means[XXX,XXX] MWh during the first Contract Year and for each Contract Year thereafter during the Delivery Term. [*If there is an annual adjustment for degradation, this should be noted.*] |
| **Test Energy Rate:** | Prior to COD, Buyer will purchase all Delivered Energy and any associated Environmental Attributes at fifty percent (50%) of the Contract Price. |
| **Annual Excess Energy:** | If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy (as defined below) above the Curtailment Cap (as defined below) exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Delivered Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Day Ahead Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than $0.00/MWh.  If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap 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 Delivered Energy or Deemed Delivered Energy. |
| **Excess Energy:** | If, during any Settlement Interval, the Delivered Energy is greater than the Guaranteed Capacity times the number of hours in the Settlement Interval (“**Excess Energy**”), then the price paid by Buyer for the Excess Energy shall be Zero dollars ($0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point is negative for a settlement interval with Excess Energy, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy. |
| **Guaranteed Energy Production:** | Seller shall deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each two (2) consecutive Contract Year period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Adjusted Energy Production (as defined below), as measured in MWh, equal to or greater than ninety percent (90%) of the total aggregate Expected Energy for the applicable Performance Measurement Period.  The Adjusted Energy Production will be used for purposes of determining whether Seller has achieved the Guaranteed Energy Production. The “**Adjusted Energy Production**” equals the Delivered Energy for the applicable Performance Measurement Period, plus (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.  If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer liquidated damages equal to (i) the difference between the Guaranteed Energy Production and the Adjusted Energy Production, multiplied by (ii) difference between (A) the replacement price for Portfolio Content Category 1 renewable energy and RECs of the same vintage, delivery profile, and resource and (B) the Contract Price. 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, beginning in the second Contract Year, the Adjusted Energy Production amount in a Contract Year is not at least sixty-five percent (65%) of the Expected Energy amount in that Contract Year; or  1. if, in each of any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least eighty percent (80%) of the Expected Energy amount in each Contract Year. |
| **Curtailment:** | In the event the Facility is curtailed due to a Force Majeure Event, by the CAISO or the transmission owner, or for any reason other than Buyer’s sole action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.  Buyer shall have the right to order Seller to curtail deliveries of Delivered Energy, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with such Buyer-directed curtailments in excess of the Curtailment Cap at the Contract Price, subject to the Annual Excess Energy provisions.  “**Curtailment Cap**” is the quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Installed Capacity.  “**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to a Buyer Curtailment Order or Buyer Bid Curtailment. |
| **Operations and Maintenance:** | Seller shall not during the months of June through September, inclusive, schedule any non-emergency maintenance that reduces the Delivered Energy 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 electrical practices, or (iv) the Parties agree otherwise in writing. |
| **REC Tracking System:** | Seller shall transfer RECs associated with Delivered Energy for each month via WREGIS pursuant to the timelines in WREGIS Operating Rules. Each party shall be responsible for setting up an account with WREGIS. |
| **Resource Adequacy Failure:** | The Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status or secured interconnection and transmission service to an CAISO Intertie for the Facility in the amount equal to the Guaranteed RA Amount by COD, or if Seller otherwise fails to provide the Guaranteed RA Amount of Capacity Attributes in any Showing Month beginning with the Showing Month that contains the COD, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer, and as Buyer’s sole remedy, for the Capacity Attributes that Seller failed to convey to Buyer.  RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference (such difference, the “**RA Shortfall**”), expressed in kW, of (i) Guaranteed RA Amount, minus (ii) the lowest amount (in kW) eligible to be included as System RA in Buyer’s members Supply Plans by both the CPUC and CAISO for such month, multiplied by the larger of (a) $10.00/kW-mo., or (b) the CPM Soft Offer Cap and the RA Penalty; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the RA Shortfall, provided that any Replacement RA capacity is (i) communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form attached to the PPA at least seventy-five (75) days before the applicable Showing Month, (ii) delivered to Buyer at least ten (10) Business Days before the CPUC and CAISO Showing Deadline for the Showing Month for the purpose of annual and monthly RA Plan reporting, and (iii) such Replacement RA capacity shall be required to comply with the requirements of D.21-06-035, only to the extent required for the Product purchased hereunder to be applied towards Buyer’s compliance with its procurement obligations under D.21-06-035 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties. |
| **Shared Facilities:** | The Facility shall be separately metered from any other generation or storage facilities and 100% of the Product available from the Facility shall be conveyed to Buyer under the PPA.  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 PPA; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) provide for separate metering and separate CAISO resource IDs for the Facility. |
| **RPS Compliance:** | Seller must ensure the Facility obtains CEC pre-certification prior to the COD, obtains CEC certification within 180 days of COD, and maintains such CEC certification during the Delivery Term. Seller shall ensure that the Product qualifies as Portfolio Content Category 1 throughout the Delivery Term. If a change of law occurs after execution of the PPA that impacts Facility’s CEC certification or the Product’s qualification as Portfolio Content Category 1, then Seller shall comply with such change of law as necessary to maintain the Facility CEC certification and Product eligibility described above. |
| **Zero Onsite Emissions** | If applicable, Seller must ensure the Facility does not produce any onsite emissions, and Seller shall provide to the Buyer adequate documentation thereof in a manner satisfactory to Buyer to demonstrate compliance with the FCR designation, regularly as required by the CPUC, but in no event less frequently than annually. |
| **Commercial Operation Date:** | The “**Commercial Operation Date**” or “**COD**” shall be the later of (a) the Expected Commercial Operation Date or (b) the date on which Commercial Operation is achieved. “**Commercial Operation**” means the condition existing when Seller has fulfilled the following conditions precedent in the PPA and provided notice of same to Buyer, including providing a certificate from an independent engineer to Buyer with respect to subparts (i), (iii), (iv) and (v):   1. Facility has met all Interconnection Agreement requirements or Agreements required to be capable of delivering energy within or to the CAISO Balancing Authority; 2. For projects within the CAISO Balancing Authority, Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status (as defined in the CAISO tariff). For projects outside of the CAISO Balancing Authority, Seller has reasonably demonstrated it has the ability to interconnect to the host transmission service provider and has secured a reservation of transmission to an intertie point with the CAISO; 3. Seller has provided Buyer Maximum Import Capability (MIC) rights for full RA Product, if applicable; 4. Commissioning of equipment has been completed in accordance with the manufacturer’s specifications; 5. 95% of Guaranteed Capacity has been installed and commissioned; 6. Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Facility; 7. All applicable permits and government approvals required for the operation of the Facility have been obtained; 8. Seller has obtained all real property rights necessary to operate the Facility; 9. Security requirements for the Delivery Term have been met; and 10. Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer.   Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date. Seller shall notify Buyer in writing when Seller believes that it has provided the required documentation to Buyer and met the conditions for achieving COD. Buyer shall have five (5) Business Days to approve or reject in writing Seller’s request for COD. |
| **Guaranteed Construction Start Date:** | The “**Guaranteed Construction Start Date**” means the following date [\_\_\_\_\_\_\_], subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.  If Seller fails to achieve Construction Start of the Facility by the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, for each day of delay in achieving Construction Start, up to a maximum of ninety (90) days, in an amount of the Development Security divided by ninety (90) (the “**Daily Delay Damages**”). The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD. Daily Delay Damages shall be paid to Buyer in advance monthly.  Failure to achieve Guaranteed Construction Start within ninety (90) days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security. |
| **Guaranteed Commercial Operation Date:** | The “**Guaranteed Commercial Operation Date**” or “**Guaranteed COD**” means the following date [\_\_\_\_\_\_\_], subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.  If the Seller does not achieve Commercial Operation of the Facility by the Guaranteed COD, Seller shall pay delay damages to the Buyer for each day of delay in achieving Commercial Operation, up to a maximum of sixty (60) days, in an amount of the Development Security divided by sixty (60) (the “**Commercial Operation Delay Damages**”). Commercial Operation Delay Damages shall be paid to Buyer in advance monthly. A prorated amount will be returned to Seller if the COD is achieved during the month for which Delay Damages were paid in advance.  Failure to achieve COD within sixty (60) days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security in addition to Delay Damages. |
| **Project 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. |
| **Delivery Point:** | “**Delivery Point**” means [the Facility Pnode] on the CAISO grid. |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Settlement Point:** | The “**Settlement Point**” shall be [\_\_\_\_\_\_\_\_\_\_].  *(Note: Pricing is requested based both the pNode and NP-15 (TH\_NP15\_GEN-APND).* |
| **Site Control:** | Seller shall maintain Site Control throughout the Delivery Term. |
| **Permits and Approvals:** | Seller shall obtain any and all permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“**CEQA**”) or other environmental law, from the local jurisdiction where the Project is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Project. |
| **Facility Development Milestones:** | * [date] – evidence of Site Control * [date] - receipt of CEC Pre-certification * [date] – financing milestone * [date] – Seller’s receipt of Phase I and II interconnection study results for seller’s interconnection facilities * [date] – execution of Interconnection Agreement * [date] – financial close * [date] – procurement of Major Equipment * [date] – obtain federal and state discretionary permits * [date] – Guaranteed Construction Start Date * [date] – obtain Full Capacity Deliverability Status, if applicable * [date] – initial synchronization * [date] – CAISO commercial operation * [date] – Expected Commercial Operation Date   [date] – Guaranteed Commercial Operation Date  [date] – Final CEC certification (within 180 days of COD) |
| **Scheduling Coordinator:** | [Buyer/Seller] shall provide the Scheduling Coordinator, or SC, (as defined by the CAISO) for the Facility.  The party that provides the SC shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments; *provided*, if Seller will be the SC, the $/MWh Contract Price will be settled as the difference between the Contract Price and the DA LMP.  Regardless of which party provides the SC, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller’s failure to perform, (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity (as defined by the CAISO) from the Facility (including Non-Availability Charges (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller’s failure to comply with a timely Buyer Curtailment Order if such failure results in incremental costs to Buyer.  Outage and curtailment notifications will be required by Buyer as well as access to Facility operational data. |
| **Forecasting and Scheduling:** | Seller shall provide annual, monthly, and day-ahead forecasts of available capacity and expected energy and provide real-time updates to forecasts of the same, as applicable. In the event Seller does not provide the required forecasts, and Buyer incurs a loss or penalty resulting from Seller’s failure, Seller shall be responsible for a Forecasting Penalty. Seller shall comply with all applicable obligations of the CAISO Tariff, and shall fully cooperate with Buyer, the SC, and the CAISO, in providing all data, information, and authorizations required thereunder. |
| **Dispatch:** | Seller shall reduce the amount of Delivered Energy produced by the Facility by the amount and for the period of time set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from the CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order, Buyer Curtailment Order or notice in respect of a Buyer Bid Curtailment is inconsistent with the limitations of the Facility set out in the Operating Restrictions.  Buyer shall have the right to order Seller to curtail deliveries of Delivered Energy through Buyer Curtailment Orders; *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Order that exceeds the Curtailment Cap.  If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order. |
| **Station Use:** | Buyer shall not be responsible for Station Use. Expected Station Use: [XX] MWh per year. |
| **Workforce Development:** | Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination and prevailing wage laws. Although the Facility is not a public work as defined by California Labor Code section 1720, any construction work contracted by Seller in furtherance of this Agreement shall (i) comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in California Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time (“**Prevailing Wage Requirement**”); and (ii) be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations (“**Project Labor Agreement**”). Seller shall use best efforts to include the following language in any Project Labor Agreement: “Union members agree not to make any written or verbal statements about CC Power or its members that are disparaging, untrue or inaccurate.” |
| **Prohibition Against Forced Labor:** | Seller represents and warrants that it has not and  will  not  knowingly utilize  equipment  or  resources for  the  construction,  operation  or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“**Forced Labor**”). |
| **Local Workforce:** | [If applicable, include % of workforce from Buyer’s service territory Seller will utilize] |
| **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 the PPA dispute process. |
| **Progress Reporting:** | After execution of the PPA, Seller shall provide to Buyer a quarterly report until the earlier of Construction Start or one year prior to the Guaranteed Commercial Operation Date, followed by a monthly report until the COD that (a) describes the progress towards meeting the Facility Development Milestones; (b) identifies any missed Facility Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller’s corrective actions to achieve the missed Facility Development Milestones and all subsequent Facility Development Milestones by the Guaranteed Commercial Operation Date. If applicable, progress reporting shall also include reporting on small business activities.  In the event Seller misses any Project Development Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the PPA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity. |
| **Credit Requirements:** | The Seller shall post security as follows:  Development Security – $90/kW of Guaranteed Capacity  Performance Security – $105/kW of Guaranteed Capacity  To secure its obligations under the PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the PPA Effective Date and shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Development Security and Performance Security shall be in the form of cash or a Letter of Credit.  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. |
| **Buyer Pass Through Liability Agreement** | Seller, Buyer and Participating CCAs will enter into a Buyer Pass Through Liability Agreement that provides:   1. Seller may pursue Participating CCAs for their proportional share of Buyer’s payment obligations. 2. Seller waives the ability to collect any Damage Payment or Termination Payment that Buyer may owe under the PPA. 3. Seller does not have recourse to a Participating CCA for another Participating CCA’s payment obligations. |
| **Participation Agreement** | Buyer and Participating CCAs will sign a Participation Agreement that:   1. Sets forth the Participating CCAs and their proportional share of Buyer’s payment obligations; 2. Requires each Participating CCA to step up to accept up to an additional 25% of its initial proportional share in the event another Participating CCA defaults; and 3. Requires each Participating CCA to prepay to Buyer three (3) months of payments associated with their proportional share. |
| **Compliance with Laws:** | Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. |
| **Business Tax: [[1]](#footnote-2)** | The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Proposed Transaction term. |
| **Assignment:** | Neither Party may assign the PPA without prior written consent of the other Party, which shall not be unreasonably withheld, delayed or conditioned; *provided*, Seller has the right to assign the PPA as collateral for any financing or refinancing of the Facility without the consent of Buyer.  Any direct or indirect Change of Control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned.  Seller shall pay Buyer’s reasonable expenses, including attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer’s rights, benefits, risks or obligations under the PPA, or to modify such PPA. |
| **No Recourse to Members of Buyer:[[2]](#footnote-3)** | Buyer 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. Except as set forth herein including the Buyer Pass Through Liability Agreement, Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this Confirmation. |
| **Appropriation of Funds:[[3]](#footnote-4)** | Buyer 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 PPA shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the PPA; provided, however, that (a) Buyer has created and set aside the Designated Fund for payment of its obligations under the PPA and (b) 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, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Special Fund necessary to pay its obligations under the PPA and all of Buyer’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer’s payment obligations under the PPA are special limited obligations of Buyer payable solely from the Special Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the term of the PPA. |
| **Designated Fund and Limited Obligation:[[4]](#footnote-5)** | **Designated Fund**. Buyer’s payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund (“Designated Fund”) that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. 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, the Buyer 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 Buyer’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.  **Limited Obligations**. Buyer’s payment obligations are special limited obligations of the Buyer payable solely from the Designated Fund. Buyer’s payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.Buyer 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. Except as set forth herein, Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this Confirmation. |
| **Force Majeure:** | “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.  Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.  Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the PPA. |
| **Other Standard Contract Terms to be included in the PPA:** | **Event of Default**: In addition to the Events of Default already discussed herein, Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the PPA, bankruptcy, and assignment not permitted by the PPA.  **Indemnification**: Seller to indemnify Buyer for third party claims arising from Seller’s negligence, willful misconduct, or breach of the PPA.  **Governing Law**: State of California  **Venue**: As mutually agreed or if no agreement is possible the City and County of San Francisco |
| **Definitions:** | The following terms, when used herein with initial capitalization, shall have the meanings set forth below:  “**CAISO**” means the California Independent System Operator.  “**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.  “**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.  “**CEQA**” means the California Environmental Quality Act.  “**Delivery Term**” shall mean the period of Contract Years beginning on the Commercial Operation Date.  “**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 with such bank (a) having a credit rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer.  “**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.  “**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current |

1. **Neither Party Obligated to Enter Into Proposed Transaction**. This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into a PPA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the PPA and will not be bound by any term thereof, unless and until authorized representatives of both Parties execute final definitive documents, enforceable in accordance with their terms.
2. **Other Agreements**. In connection with this Term Sheet, Seller shall execute that certain Exclusivity Agreement (“**Exclusivity Agreement**”) with Buyer and provide a Shortlist Deposit (as defined in such agreement) of $3 per KW to Buyer within three (3) Business Days after execution of the Exclusivity Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusivity Agreement.
3. **Expenses**. Each Party 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.
4. **Termination**. This Term Sheet will terminate upon the earlier of (a) execution of the PPA or (b) expiration of the Exclusivity Period (as defined in the Exclusivity Agreement), as such Exclusivity Period may be extended by the Parties in accordance with the Exclusivity Agreement.
5. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
6. **No Consequential Damages**. IN NO EVENT SHALL EITHER PARTY, ITS 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.

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1. This language is applicable if San Jose is the Buyer. [↑](#footnote-ref-2)
2. This language is applicable if the Buyer is a JPA. [↑](#footnote-ref-3)
3. This language is applicable if San Jose is the Buyer. [↑](#footnote-ref-4)
4. This language is applicable if San Jose is the Buyer. [↑](#footnote-ref-5)