**TERM SHEET FOR OAKLAND CLEAN ENERGY INITIATIVE**

**EAST BAY COMMUNITY ENERGY**

This Term Sheet is not an agreement, commitment, offer to enter an agreement or any legally binding obligation. It is intended solely as a basis for further discussion regarding a potential agreement between Buyer and Seller, and is subject to completion of Buyer and Seller’s due diligence, Buyer and Seller’s satisfaction with the results of such due diligence and to the negotiation, execution and delivery of documentation to the satisfaction of the Parties hereto in their sole discretion.

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|  | Project | All units, together with all appurtenant facilities and equipment, including any control and communications systems, necessary to provide Products. Each Unit must be a distributed energy resource located within Alameda County and may include the following technology types: energy storage (in front of or behind the Project’s retail meter) and front-of-the-meter renewable generation. |
|  | Transaction | Provider (“Seller”) shall sell and deliver, and East Bay Community Energy (“EBCE” or “Buyer”) (individually a “Party” and together the “Parties”) shall purchase all, or some portion of, the Products that the Project produces.  At the sole discretion of the Buyer, the “Product(s)” that may be delivered and sold by Seller and received and purchased by Buyer may include some or all of the following: Energy, Renewable Energy Credits, Environmental Attributes, Capacity, Resource Adequacy and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project. Product shall include all attributes currently recognized that are associated with the generation from the Product during the Delivery Term.  Seller may not provide Products from a source other than the Project. At Buyer’s request, Seller shall provide to Buyer all information and data necessary to confirm that Seller delivered the Product from the Project. |
|  | RPS Energy Products (if offered) | Buyer’s purchase of Energy will include Renewable Energy Credits and all other environmental and green attributes from the Project (“RPS Energy”). RPS Energy shall be bundled electricity from a renewable generator that qualifies as a Portfolio Content Category 1 resource, as defined by the California Energy Commission (“CEC”) Eighth Edition Renewables Portfolio Standard Eligibility Guidebook. Seller will obtain and maintain throughout the Delivery Term a California Renewable Portfolio Standard (“RPS”) PCC 1 eligibility designation for the Project from the CEC.  Seller shall sell and Buyer shall purchase RPS Energy on a [firm or as-delivered] ***[Seller to designate]*** basis. |
|  | Capacity Products (if offered) | Buyer’s purchase of capacity Products from the Project will include all System, Local, and/or Flexible Resource Adequacy Products and any other capacity attributes that are created by the Project. Resource Adequacy Products shall meet all of the applicable requirements set forth in California Public Utilities Code 380 and CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, and subsequent decisions related to Resource Adequacy, as may be amended from time to time by the CPUC, including CPUC Decisions 13-06-024, 14-06-050, 15-06-063, 16-06-045, and 17-06-027. |
|  | Contract Quantity / Capacity | RPS Energy Annual Contract Quantity: [•] MWh ***[Seller to designate expected quantity, as well as min/max]***  ***[Seller to designate expected capacity and min/max for the following:]***  System Resource Adequacy: [•] MW  Local Resource Adequacy [•] MW  Flexible Resource Adequacy [•] MW |
|  | Contract Price | RPS Energy ($/MWh bundled energy/capacity price or energy only):  [•] $/MWh ***[Seller to designate]***  Capacity Only = [•] $/kw-month ***[Seller to designate]*** |
|  | Operating Parameters | The Operating Parameters of the Project are:  Delivery Months:   * ***[Seller to designate]***   Delivery Days:   * ***[Seller to designate]***   Nameplate Capacity:   * ***[Seller to designate]***   Net Qualifying Capacity:   * ***[Seller to designate]*** |
|  | Scheduling | For RPS Energy Products, Buyer or Buyer’s agent shall act as the Scheduling Coordinator (as defined by the CAISO) or “SC”, for the Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments; provided, however, that notwithstanding the foregoing, 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), 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.  Seller shall provide to Buyer non-binding annual, monthly, and day-ahead forecasts of Delivered Energy within a timeline that allows Buyer or Buyer’s agent the ability to meet the CAISO day-ahead scheduling protocols and deadlines. Outage and curtailment notifications will be required by Buyer as well as access to Facility generation data.  For Capacity Only Products, Seller or Seller’s agent shall act as the SC. Seller shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments.  (*Note: For RPS Energy Products, Seller may elect to be responsible for the SC role, subject to Buyer approval of SC. Buyer will otherwise be responsible for the SC role where Buyer’s output share is 100%. If Buyer’s output share is less than 100%, then Seller will be responsible for performing the SC role.)* |
|  | Curtailment Rights (applies to RPS Energy Product) | Reliability-based Curtailment: In the event the Project is curtailed due to Force Majeure, by the CAISO or the transmission owner, or for any reason other than Buyer’s 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.  Economic Curtailment: Notwithstanding the foregoing, Buyer may in its sole discretion curtail deliveries of Product at any time and for any duration, including curtailment due to Buyer’s self-schedule (or lack thereof) or economic bid into the CAISO (“Buyer Curtailment Order”). All energy not generated during the time period set forth in the Buyer Curtailment Order shall be “Deemed Generated Energy.” Buyer shall pay Seller the Contract Price for all Deemed Generated Energy, except as set forth in the Annual Excess Energy provision.  Excess Curtailment: Notwithstanding the foregoing, Buyer may curtail deliveries of Product in excess of the maximum Annual Expected Output, and Buyer shall not be obligated to pay for such curtailed energy.  Seller shall be responsible for complying with all curtailment orders issued by the CAISO, the transmission owner, or Buyer. |
|  | Annual Excess Energy (applies to RPS Energy Product) | If during any Contract Year, the sum of the Delivered Energy and Deemed Generated Energy is in excess of the maximum Annual Expected Output, then for each MWh of Delivered Energy or Deemed Generated Energy in excess of such threshold (“Annual Excess Energy”), the applicable price paid by Buyer shall be equal to the lesser of: (a) the Delivery Point LMP applicable to the interval in which such Annual Excess Energy was delivered or deemed generated, as applicable, or (b) 75% of the Contract Price. |
|  | Renewable Energy Credits and Attributes (applies to RPS Energy Product) | Seller will convey to Buyer all of the Renewable Energy Credits, Environmental Attributes and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project and that the Project generates during the Delivery Term. Seller represents and warrants that Seller holds and will maintain rights to all these attributes and Seller agrees to convey them all to the Buyer as part of the delivery of the Product from the Project.  Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to the Project’s Energy are issued and tracked for purposes of satisfying the requirements of the California RPS and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall reimburse Buyer for any Renewable Energy Credits associated with the Project’s generation which are not timely delivered to Buyer. |
|  | Operational Control & Scheduling | Notwithstanding Seller’s obligations to deliver Products, Seller will have operational control of the Project and be responsible for operation and maintenance of the Project. Buyer will not bear any costs related to permitting, development, ownership, operation, scheduling, dispatch, or maintenance of the Project.  Prior to execution of the Agreement, Buyer and Seller shall mutually agree upon a party (or parties) that will provide scheduling, dispatch, and operation and maintenance services for the Project. |
|  | Project Site and Customers | Seller shall execute all necessary forms, documentation, and agreements in order to secure all Sites and/or Customers necessary to deliver Products to Buyer. The terms and conditions of the agreements Seller has for the Site and/or with Customers are independent of Buyer, and Buyer shall not have any responsibility or incur any liability pursuant to such agreements. |
|  | Interconnection | ***[Seller to designate]*** |
|  | Initial Delivery Date (IDD) | February 1 , 2022.  Failure to meet the Initial Delivery Date will be an Event of Default. |
|  | Delivery Term | The Delivery Term will be [***Seller to designate; minimum 10***] years from the Initial Delivery Date. |
|  | Critical Milestones | Seller shall cause the development and construction of the Project to meet each of the following (“Critical Milestones)” by the date set forth: [***Seller to designate milestone dates***]  (i) Site control:  (ii) Execution of interconnection agreement(s):  (iii) Commercial Operation Date:  To the extent Seller anticipates it will not be able to achieve any of the Critical Milestones, Seller shall notify Buyer no later than 30 days prior to the applicable date. If Seller anticipates missing Critical Milestones (i) or (ii), it shall prepare and submit for Buyer’s review and approval a remedial action detailing Sellers’ plan to achieve the missed milestone and subsequent milestones. Seller’s failure to achieve Critical Milestone (iii) shall be considered an Event of Default. |
|  | Measurement and Verification | The amount of Product the Project delivers will be measured based on the Project’s technology, and will include for:  [***Seller to designate***] |
|  | Seller Performance Assurance | Seller shall deliver to Buyer and maintain Performance Assurance in the form of cash or letter of credit acceptable to Buyer to secure its obligations under the Agreement, which shall include both Project Development Security and Delivery Term Security in the amounts below:  Project Development Security: $40/kw  Delivery Term Security: $40/kw |
|  | Events of Default | Agreement will include customary Events of Default, including but not limited to the following:  (i) Failure to meet the Commercial Operation Date;  (ii) Failure to meet the Initial Delivery Date;  (iii) Failure to meet minimum energy delivery quantities over two consecutive contract years (for RPS Energy Products) or failure to meet minimum capacity quantities over two consecutive contract years (for bundled products that include Capacity or Capacity Only products);  (iv) Failure to make any required payment if failure is not remedied in a short time period;  (v) Failure to meet creditworthiness/collateral requirements;  (vi) Any false representation or warranty made by a Party; or  (vii) Failure to perform any material covenant or obligation. |
|  | Force Majeure | “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation excused thereby, (ii) the Party seeking to have its performance obligation excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under the Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.  Buyer shall have the right, but not the obligation, to terminate the Agreement to the extent a Force Majeure event prevent Seller from meeting its obligation under the Agreement for a period longer than six (6) months.  Inability to obtain or retain the Site and/or Customers shall not constitute a Force Majeure event. |
|  | Termination Payment | In an Event of Default, the Non-Defaulting Party has the right to terminate this agreement, whereby the Defaulting Party will owe the Non-Defaulting Party a Termination Payment. The Termination Payment will be equal to the Project Development Security if such termination occurs prior to the Initial Delivery Date and equal to the Delivery Term Security if such termination occurs after the Initial Delivery Date. |
|  | Prevailing Wages | It is Buyer’s intent that wages paid for all work performed as a result of the Project meet or exceed prevailing wages as described in this section: all executed contracts resulting from this Project shall include prevailing wage provisions mandating that all workers employed on or in support of the Project(s) by the Seller or through subcontractors as a result of the contract execution be paid not less than the prevailing rate of wages for the appropriate craft, classification, type of worker and locality as determined by the Director of the State Department of Industrial Relations in accordance with Division 2, Part 7, Chapter 1 of the California Labor Code, or as set out in the wage determination of the U.S. Secretary of Labor, whichever is higher. Nothing herein shall require Buyer, Buyer’s contractors, or subcontractors to comply with, or assume liability or obligations created by other inapplicable provisions of the California Labor Code. |
|  | Local Workforce | Seller must abide by any local workforce proposal included in bid, including project development and/or maintenance activities that are completed by and/or utilize labor and other workforce resources sourced from Alameda County, California |
|  | CPUC Approval of Contingent PG&E Project Reliability Contract | If Seller enters into a separate agreement with PG&E for reliability products from the Project, this agreement with EBCE is contingent on the reliability agreement with PG&E, and CPUC Approval of the PG&E reliability agreement has not occurred on or before 180 days from the date on which PG&E files the reliability agreement with the CPUC seeking CPUC Approval, then either Party may terminate this agreement.  “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to either Seller or PG&E, pursuant to which the CPUC approves of the agreement in its entirety. |
|  | Conditions Precedent | The Initial Delivery Date shall not occur until:   1. the Agreement has been duly executed by the authorized representatives of each of Buyer and Seller; 2. CPUC approval of contract with PG&E for reliability products from the Project has been obtained ***[to the extent contingent and required; Seller to specify]***; 3. Seller has constructed the Project and provided Buyer certification from an independent engineer that the Project is commercially operable and constructed in accordance with the safety requirements; and 4. Seller has provided Buyer with customary documentation, including Seller’s organizational incorporation/charter, evidence of site control, evidence of CEC certification and verification, and recent financial statements. |
|  | Limitations on Liability | IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST PROFITS OR LOST REVENUE, ARISING FROM OR BASED ON THIS TERM SHEET, WHETHER ALLEGED AS A BREACH OF CONTRACT OR NEGLIGENCE OR OTHER TORTIOUS CONDUCT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. |
|  | Indemnification | To the maximum extent allowed by law, Seller will indemnify, protect, defend, with counsel reasonably approved by Buyer, and hold harmless Buyer, its officers, employees, and agents, from and against any and all claims, losses, damages, injuries, expenses or liabilities that, directly or indirectly, or in whole or in part, arise out of, pertain to, or relate to Seller’s obligations under this Agreement, including without limitation, violation or infringement of trademarks or patents, any act or omission by Seller or its subcontractors, or anyone under Seller’s control, or any breach of this Agreement. This indemnity applies whether such actions or omissions are negligent (active or passive), intentional or reckless. |
|  | Expenses | Each Party is solely responsible for any and all fees or expenses it may incur in connection with this Term Sheet, including but not limited to legal counsel, professional accountants, or technical consultants’ fees or expenses. |
|  | Confidentiality | Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the California Public Records Act, Cal. Gov. Code § 6250 et seq. (“CPRA”). The Parties will keep confidential and not disclose to any third party the terms contained in this term sheet, except as required by law, including the CPRA. If terms in the term sheet are proprietary and confidential information, Seller must notify Buyer by clearly marking such information “CONFIDENTIAL AND PROPRIETARY” and identify the specific lines containing such information (the “Confidential Information”) and the CPRA exemption applicable to such information. DO NOT MARK THE ENTIRE TERM SHEET “CONFIDENTIAL.” Except for disclosures to Buyer’s directors, officers, employees, agents, representatives or advisors (including financial advisors, attorneys and accountants), Buyer shall disclose such Confidential Information to third parties only to the extent that such disclosure is required by California law (including, without limitation, the California Constitution, the CPRA and the Brown Act) as set forth in this Section.  In the event of a third-party request for Buyer to disclose such Confidential Information, Buyer will make reasonable efforts to provide notice to Seller prior to disclosure. If Buyer believes that such Confidential Information may be subject to disclosure under California law and Seller contends that any Confidential Information is exempt from the CPRA and wishes to prevent disclosure, Seller must obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Alameda County, California, before Buyer’s deadline for responding to the CPRA request. If Seller fails to obtain such remedy prior to Buyer’s deadline for responding to the CPRA request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer will not have any liability to Seller arising out of any disclosure by Buyer of any Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third-party disclosure.  Both Parties may jointly agree to disclose the terms contained in this term sheet at any time, and either Party, without the other Party’s approval, may disclose the terms contained in this Term Sheet to its’ agents, advisors, board of directors, legal counsel, and/or investors, provided that the disclosing Party first makes any such third party aware of the strictly confidential nature of the term sheet and that as a condition of obtaining any information about the Term Sheet, such third party agrees to maintain the confidentiality of the Term Sheet. |
|  | Governing Law and Venue | California, Alameda County |