

**Attachment 3 - Long-term New Renewable Project Key Terms
Term Sheet for Power Purchase Agreement – Renewables Only**

THIS TERM SHEET FOR POWER PURCHASE AGREEMENT (“**Term Sheet**”) is entered into as of _____, 2020 (the “**Effective Date**”), between City of San José, a California municipality, doing business as San José Clean Energy (“**SJCE**”) and [*Respondent*] (“**Respondent**”). This Term Sheet includes the key commercial terms and conditions to be included in a proposed power purchase agreement (“**PPA**”) to be negotiated between SJCE (“**Buyer**”) and [*e.g., Project Company LLC*] (“**Seller**”) (the “**Proposed Transaction**”). As used herein, Buyer and Seller are each a “Party” and collectively the “Parties.” Notwithstanding anything herein to the contrary, that until a definitive agreement is approved by Buyer’s management and City Council 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.

1. PPA Terms.

Seller:	[<i>Seller Name, e.g., Project Company LLC</i>] <i>(If applicable, please identify Seller’s guarantor)</i>
Buyer:	City of San José, a California municipality, doing business as San José Clean Energy
Defined Terms:	Please see the Definitions section below for additional definitions.
Facility:	“ Facility ” or “ Project ” means the [____] project, located in [County], in the State of [California].
Guaranteed Capacity:	The Guaranteed Capacity of the Facility is [____] MW.
Product:	The “ Product ” shall meet the Portfolio Content Category 1 specifications, and includes all of the following: <ul style="list-style-type: none"> (1) Delivered Energy: All of the as-available electric energy generated by the Facility, delivered to the Delivery Point, as measured by CAISO-approved meters, pursuant to the Scheduling Requirements; (2) Environmental Attributes: All renewable energy credits (“RECs”) and any other environmental attributes associated with Delivered Energy; (3) Capacity Rights: All capacity rights, including resource adequacy benefits, if any, associated with the Facility; and

	<p>(4) Ancillary Services: All ancillary services, products and other attributes, if any, associated with the Facility.</p> <p>Specifications for Portfolio Content Category 1 are described in California Public Utilities Code §399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders.</p>
<p>Delivery Term:</p>	<p>[____] Contract Years from the Commercial Operation Date.</p>
<p>Commercial Operation Date:</p>	<p>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), (ii), (iii) and (iv):</p> <ul style="list-style-type: none"> (i) Facility has met all Interconnection Agreement requirements and is capable of delivering energy from the Facility to the CAISO; (ii) Commissioning of equipment has been completed in accordance with the manufacturer’s specification; (iii) At least 95% of Guaranteed Capacity has been installed and commissioned; (iv) Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Facility; (v) All applicable permits and government approvals required for the operation of the Facility have been obtained; (vi) Seller has obtained all real property rights; (vii) Security requirements for the Delivery Term have been met; (viii) Seller has paid Buyer all amounts owing under the PPA, if any, including Daily Delay Damages and Commercial Operation Delay Damages; and (ix) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer. <p>Seller shall provide notice of expected COD to Buyer in writing at least sixty (60) days in advance of such date.</p>
<p>Expected Construction Start Date:</p>	<p>Seller reasonably expects to achieve Construction Start by the following date [_____] (the “Expected Construction Start Date”).</p>

<p>Guaranteed Construction Start Date:</p>	<p>The “<u>Guaranteed Construction Start Date</u>” means the Expected Construction Start 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.</p> <p>In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the “<u>Daily Delay Damages</u>”) for each day of delay, in the amount of the Development Security divided by 120. The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Guaranteed Construction Start within 180 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.</p>
<p>Expected Commercial Operation Date:</p>	<p>Seller reasonably expects to achieve Commercial Operation by the following date [_____] (the “<u>Expected Commercial Operation Date</u>”).</p>
<p>Guaranteed Commercial Operation Date:</p>	<p>The “<u>Guaranteed Commercial Operation Date</u>” or “<u>Guaranteed COD</u>” means the Expected Commercial Operation 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.</p> <p>If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay Delay Damages to the Buyer for each day of delay until Seller achieves COD.</p> <p>“<u>Delay Damages</u>” are equal to the Development Security divided by 60. 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 Delay Damages were paid in advance.</p>

	Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.
Project Interconnection Point:	The Project shall interconnect to [e.g., XX substation] (the “ Interconnection Point ”). Seller shall be responsible for all costs of interconnecting the Project to the Interconnection Point.
Delivery Point:	“ Delivery Point ” means [the Facility Pnode] on the CAISO grid.
Settlement Point:	The “ Settlement Point ” shall be [_____]. <i>(Note: SJCE is requesting pricing based both the pNode and NP-15 (TH_NP15_GEN-APND)).</i>
CAISO Market:	Day-Ahead
Deliverability:	The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date, if applicable.
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.
Project Development Milestones:	<ul style="list-style-type: none"> • [date] – receipt of CEC pre-certification • [date] – execution of Interconnection Agreement • [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] – Guaranteed Commercial Operation Date
PPA Price:	The “ PPA Price ” shall be \$[___]/MWh of Delivered Energy flat with no escalation. As applicable, Buyer shall receive a credit for an adjustment based on the Settlement Point.

	<p>Prior to COD, Buyer will purchase Test Energy at fifty percent (50%) of the PPA Price for up to 90 days.</p>
<p>Expected Energy:</p>	<p>[_____] MWh during the first Contract Year with [%] reduction in Expected Energy for each year thereafter during the Delivery Term. <i>[Note: Seller may want to insert a table for each Contract Year of the Delivery Term showing associated Expected Energy.]</i></p>
<p>Scheduling Requirements and CAISO Settlements:</p>	<p>Buyer or Buyer’s agent shall act as 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 (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.</p> <p>Seller shall provide to Buyer non-binding annual, monthly, day-ahead, and real-time forecasts of Delivered Energy within a timeline that allows Buyer or Buyer’s agent the ability to meet CAISO market and scheduling deadlines. Outage and curtailment notifications will be required by Buyer as well as access to Facility generation data.</p>
<p>Monthly Settlement and Invoice:</p>	<p>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.</p> <p>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.</p> <p>A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the</p>

	<p>disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section ## within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.</p>
<p>Output Guarantee:</p>	<p>The Seller guarantees that Delivered Energy amounts during the Delivery Term shall meet or exceed the Guaranteed Output Threshold for each Performance Measurement Period.</p> <p>The “Guaranteed Output Threshold” shall be equal to the following listed percentages of the Annual Expected Output, based on technology type:</p> <ul style="list-style-type: none"> • Solar: 170% • Wind: 150% • Geothermal: 90% • Small Hydro: 170% <p>The “Performance Measurement Period” shall be each two year rolling period, commencing on the Contract Start Date.</p> <p>After each Performance Measurement Period, Seller shall calculate its performance for the Output Guarantee and provide sufficient detail to Buyer. For purposes of calculating the energy deliveries for the Output Guarantee, Seller shall add Delivered Energy and energy that was not delivered during Excused Hours. “Excused Hours” means hours where the Facility was not available due to Force Majeure, transmission provider’s (e.g., the CAISO’s), transmission owner’s, or Buyer’s failure to perform.</p>

<p>Output Guarantee Shortfall Damages:</p>	<p>In the event that the Guaranteed Output Threshold is not met for a Performance Measurement Period, Seller shall calculate Shortfall Energy and pay Buyer Shortfall Damages.</p> <p>“Shortfall Energy” shall be equal to the Guaranteed Output Threshold less the Delivered Energy less the energy not delivered during Excused Hours.</p> <p>“Shortfall Damages” shall be determined by multiplying (x) Shortfall Energy, by (y) the positive difference, if any, of the Replacement Price less the PPA Price. The “Replacement Price” shall be the total price at which the Buyer would have to pay to purchase energy, RECs and capacity of comparable value to replace the Shortfall Energy.</p>
<p>Performance Guarantee:</p>	<p>Buyer may terminate the PPA if the Project fails to deliver, and such failure is not excused by Force Majeure, at least (a) sixty-five (65%) of the Expected Energy in a single Contract Year or (b) at least 75% of the total Expected Energy for two consecutive Contract Years. In the event of such termination, Seller shall be liable to Buyer for a Termination Payment.</p>
<p>Excess Energy:</p>	<p>If during any settlement interval, the Delivered Energy is greater than the Guaranteed Capacity (“Excess Energy”), then the price paid by Buyer for the Excess Energy shall be Zero dollars (\$0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point (“Delivery Point LMP”) 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.</p>
<p>Annual Excess Energy:</p>	<p>If during any Contract Year, the sum of the Delivered Energy and Deemed Delivered Energy is in excess of one hundred five percent (105%) but no higher than one hundred twenty-five percent (125%) of the Annual Expected Output, then for each MWh of Delivered Energy or Deemed Delivered 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) seventy five percent (75%) of the PPA Price. If during any Contract Year, the sum of the Delivered Energy and Deemed Delivered Energy is in excess of one hundred twenty-five percent (125%), the applicable price paid by Buyer for additional Product shall be Zero dollars (\$0). Notwithstanding any provision to the contrary, in any Contract Year where the total deliveries of Delivered Energy and Deemed Delivered Energy are in excess of one</p>

	<p>hundred fifteen percent (115%), Buyer will have no obligation to pay for any additional quantities of Deemed Delivered Energy for the remainder of such Contract Year.</p>
<p>Curtailment Rights:</p>	<p>In the event the Facility is curtailed due to an Emergency (as to be defined in the interconnection agreement), Force Majeure, 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.</p> <p>Notwithstanding the foregoing, Buyer may curtail deliveries of energy at any time and for any duration (“Buyer-Directed Curtailment”); provided, that Buyer shall have no obligation to pay Seller for Buyer-Directed Curtailment up to the Curtailment Cap. For any Buyer-Directed Curtailment in excess of the Curtailment Cap, Buyer shall pay Seller for such energy at the PPA Price, subject the Annual Excess Energy provisions.</p> <p><i>(Note: SJCE requests Seller to itemize the cost impact, if any, of the Curtailment Cap on PPA Price.)</i></p>
<p>Operations and Maintenance:</p>	<p>Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the Energy generation capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing.</p>
<p>REC Tracking System:</p>	<p>The Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in WREGIS Operating Rules.</p> <p>Each party shall be responsible for setting up an account with WREGIS.</p>
<p>Progress Reporting:</p>	<p>After execution of the PPA, Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Project Development Milestones; (b) identifies any missed Project Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller’s corrective actions to achieve the missed Project Development Milestones and all subsequent Project Development Milestones by the Guaranteed Commercial Operation</p>

	<p>Date. If applicable, progress reporting shall also include reporting on small business.</p> <p>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.</p>
<p>Credit Requirements:</p>	<p>The Seller shall post security as follows:</p> <p><u>Development Security</u> – \$60/kW of Guaranteed Capacity</p> <p><u>Performance Security</u> – \$75/kW of Guaranteed Capacity</p> <p>To secure its obligations under this PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit.</p> <p>Within five (5) Business Days following any draw by Buyer on the Development Security or the Delivery Term Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p> <p>To secure its obligations under this PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.</p>
<p>Compliance with Laws</p>	<p>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</p>
<p>Business Tax:</p>	<p>The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the <u>Proposed Transaction</u> term.</p>
<p>RPS Compliance:</p>	<p>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</p>

	<p>shall comply with such change of law as necessary to maintain the Facility CEC certification and Product eligibility described above.</p>
<p>Assignment:</p>	<p>Neither party may assign the PPA without prior written consent of the other party, which will not be unreasonably withheld; provided, that Seller has the right to assign the PPA as collateral for any financing or refinancing of the Facility without the consent of Buyer.</p> <p>Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which will not be unreasonably withheld.</p> <p>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 will 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.</p>
<p>Appropriation of Funds:</p>	<p>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.</p>
<p>Designated Fund and Limited Obligation:</p>	<p>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</p>

	<p>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.</p> <p><u>Limited Obligations.</u> 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.</p>
<p>Force Majeure:</p>	<p>(a) “<u>Force Majeure Event</u>” 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.</p> <p>(b) 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.</p> <p>Notwithstanding the foregoing, the term “<u>Force Majeure Event</u>” 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</p>

	<p>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) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date.</p>
<p>Other Standard Contract Terms to be included in the PPA:</p>	<p><u>Event of Default:</u> Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the PPA, bankruptcy, assignment not permitted by the PPA, Seller failure to achieve Construction Start within one hundred eighty (180) days of Guaranteed Construction Start Date, Seller failure to achieve Commercial Operation with sixty (60) days after the Guaranteed Commercial Operation Date, and other Events of Default expressly provided for in this Term Sheet. Buyer shall be entitled to termination damages, as well as all remedies available at law and equity.</p> <p><u>Indemnification:</u> Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees collectively (“Indemnifiable Event”), to the extent such Indemnifiable Event arises out of, , pertains to, or relates to any of the following:(a) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Seller or any of its subcontractors or anyone that they control; (b) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Buyer’s use of the Product, deliverables or other items provided by the</p>

	<p>of the Seller pursuant to the requirements of this Proposed Transaction, or (c) any breach of the <u>Proposed Transaction</u>.</p> <p>The Seller’s indemnity obligations apply to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Section 2778 and 2782.8 of the California Civil Code, if applicable. Upon the Buyer’s written request, the Seller, at its own expense, must defend any suit or action that is subject to the Seller’s indemnity obligations.</p> <p>The Seller’s indemnity obligations survive the expiration or earlier termination of the <u>Proposed Transaction</u>.</p> <p><u>Governing Law</u>: State of California</p> <p><u>Venue</u>: Santa Clara County</p>
<p>Definitions:</p>	<p>The following terms, when used herein with initial capitalization, shall have the meanings set forth below:</p> <p>“<u>CAISO</u>” means the California Independent System Operator.</p> <p>“<u>CAISO Tariff</u>” 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.</p> <p>“<u>California Renewables Portfolio Standard</u>” or “<u>RPS</u>” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, <i>inter alia</i>, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.</p> <p>“<u>CEC</u>” means the California Energy Commission, or any successor agency performing similar statutory functions.</p> <p>“<u>CEQA</u>” means the California Environmental Quality Act.</p> <p>“<u>Contract Year</u>” means a period of twelve (12) consecutive months beginning on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.</p> <p>“<u>Curtailment Cap</u>” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.</p> <p>“<u>Deemed Delivered Energy</u>” 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 Generating Facility due to a Buyer-Directed Curtailment, less the amount of Energy delivered</p>

	<p>to the Delivery Point during such period; <i>provided</i> that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).</p> <p>“<u>Delivery Term</u>” shall mean the period of Contract Years beginning on the Commercial Operation Date.</p> <p>“<u>Full Capacity Deliverability Status</u>” has the meaning set forth in the CAISO Tariff.</p> <p>“<u>Guaranteed Capacity</u>” means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, as the same may be adjusted pursuant to the PPA.</p> <p>“<u>Letter(s) of Credit</u>” 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.</p> <p>“<u>MW</u>” means megawatts in alternating current, unless expressly stated in terms of direct current.</p> <p>“<u>MWh</u>” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.</p>
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2. **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.
3. **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 \$3,000/MW 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.
4. **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.
5. **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.

6. **Governing Law.** This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
7. **Counterparts and Electronic Signatures.** This Term Sheet may be executed electronically and in counterparts, each of which will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including facsimile and email transmission of a PDF image) shall be the same as delivery of an original executed signature page.
8. **Prior Agreements.** This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
9. **Assignment.** This Term Sheet will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party 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).
10. **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 AGREEMENT.