TERM SHEET

FOR

RENEWABLE GENERATION

THIS TERM SHEET FOR RENEWABLE GENERATION (“**Term Sheet**”) is entered into as of [\_\_\_\_\_], 2022 (the “**Effective Date**”), between San Diego Community Power (“**SDCP**”) and [*Respondent*] (“**Respondent**”). This Term Sheet is intended to set forth the key commercial terms and conditions to be included in a proposed agreement for the purchase and sale of renewable energy (each such agreement, a “**PPA**”) to be negotiated between SDCP (“**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, until a definitive agreement is fully negotiated and all applicable approvals have been received for each Party, 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.

1. **Terms and Conditions**.

|  |  |
| --- | --- |
| **Description of Facility:** | A [\_\_\_] MW [renewable energy generation] project located in [\_\_\_\_\_\_\_\_\_] County, in the State of [\_\_\_\_\_\_\_\_\_]. |
| **Contract Price:** | Generating Facility:  🞎$[\_\_\_\_]/MWh for all Contract Years. |
| **Settlement Point:** | The Settlement Point shall be [e.g., SP-15/SG&E DLAP/Facility PNode]. |
| **Delivery Term:** | [\_10 / 12 / 15 / 20 / 25\_\_] Contract Years. |
| **Guaranteed Capacity:** | The Generating Facility has a Guaranteed Capacity of [XX] MWAC. |
| **Facility NQC:** | Buyer is entitled to all Capacity Attributes of the Facility. The Net Qualifying Capacity (NQC) of the Facility is [XX] MW. |
| **RA Guarantee Date:** | “**RA Guarantee Date**” means the date that is sixty (60) days after the Commercial Operation Date. |
| **Capacity Area:** | [CAISO System, Sierra, Stockton, LA Basin, SD-IV, etc.] |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Scheduling Coordinator:** | [Buyer or Buyer’s agent][Seller or Seller’s agent] shall act as Scheduling Coordinator (as defined by the CAISO) or “SC” for the Facility. |
| **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. |
| **Commercial Operation Date (“COD”):** | The COD shall be the date when each of the following requirements have been met to Buyer’s reasonable satisfaction, including Seller providing a certificate from an independent engineer to Buyer with respect to subparts (i), (ii), (iii), and (iv) (such certificate, the “**COD Certificate**”):  (i) Facility has met all Interconnection Agreement requirements and is capable of delivering energy from the Facility to the CAISO Grid;  (ii) Commissioning of equipment has been completed in accordance with the manufacturer’s specification;  (iii) Ninety-five percent (95%) of Guaranteed Capacity has been installed and commissioned;  (iv) All applicable permits and government approvals required for the operation of the Facility have been obtained;  (v) Seller has delivered the Performance Security to Buyer; and  (vi) Seller has paid Buyer for all amounts owing under the PPA.  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. |
| **Guaranteed Construction Start Date:** | The “**Guaranteed Construction Start Date**” means the following date of [\_\_\_\_\_\_\_], 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 (the “**Development Cure Period**”) extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.  Notwithstanding anything to the contrary, no extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required for a Force Majeure Event, if applicable, or as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.  In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the “**Construction Delay Damages**”) for each day of delay, in the amount of the Development Security divided by 120. The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.  Failure to achieve Construction Start within 120 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security. |
| **Guaranteed Commercial Operation Date (Guaranteed COD):** | “**Guaranteed Commercial Operation Date**” or “**Guaranteed COD**” means the following date of [\_\_\_\_\_\_\_], subject to extensions on a day-for-day basis under the Development Cure Period.  Extensions of the Guaranteed COD for events of Force Majeure and interconnection delays shall not exceed one hundred and twenty (120) days after the Guaranteed COD.  If the Seller does not achieve Commercial Operation by the Guaranteed COD, Seller shall pay delay damages to Buyer (“**COD Delay Damages**”) for each day of delay, in the amount of the Development Security divided by 60, until Seller achieves COD.  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. |
| **Environmental Attributes:** | Buyer shall be entitled to renewable energy credits (“**RECs**”) and any other environmental attributes associated with Generating Facility Energy. Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in the WREGIS Operating Rules.  Each party shall be responsible for setting up an account with WREGIS. |
| **Seller Performance Assurance:** | Seller shall post security as follows:  **Development Security** – $90/kW of the Guaranteed Capacity  **Performance Security** – $105/kW of the Guaranteed Capacity  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.  Within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.  Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.  Within five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount. |
| **Expected Energy:** | “**Expected Energy**” means[XXX,XXX] MWh during the first Contract Year and for each Contract Year thereafter during the Delivery Term. |
| **Guaranteed Energy Production:** | Seller shall deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period.  The “**Guaranteed Energy Production**” means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by the applicable percentage, based on technology type:   * Geothermal: 90% * Biomass: 90%   The “**Performance Measurement Period**” shall be each two (2) consecutive Contract Year period during the Delivery Term, except for geothermal, which shall be each Contract Year, all calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.  For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency and Curtailment Periods (the “**Adjusted Energy Production**”).  If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer liquidated damages equal to (a) the difference of the Guaranteed Energy Production less the Adjusted Energy Production, multiplied by (b) the replacement price for the energy and RECs, as reasonably determined by Buyer, less the Generating Facility Contract Price, as reasonably determined by Buyer. No payment shall be due if the calculation yields a negative number. |
| **RA Failure:** | For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the difference, expressed in kW, of (A) the Qualifying Capacity for such month, minus (B) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) (the “**RA Shortfall**”), multiplied by (ii)  the sum of (1) the CPUC System RA Penalty and (2) the CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor)]; provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least twenty (20) Business Days before the deadline (as established by CAISO or any other Governmental Authority) that Buyer must meet to submit its resource adequacy plan for the applicable Showing Month for the purpose of monthly RA reporting, and further provided that such Replacement RA capacity shall be required to comply with the requirements of D.21-06-035, and in addition, meet the same sub-category attributes if contracted for one of the sub-categories 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. |
| **Operations & Maintenance:** | Seller shall develop written operating procedures for the Facility before the applicable initial delivery date which shall set forth the protocol under which the Parties shall perform their respective obligations under the PPA. During the Term, each Facility shall be operated and maintained by Seller or its designee in accordance with those practices, methods, and acts that are commonly used by a significant portion of the renewable electric generation industry.  During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure events, (iv) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing. The Planned Outages in any Contract Year shall not exceed 720 hours. |
| **Invoicing:** | Seller shall provide statement of amounts due within ten (10) days after the end of each Settlement Period.  Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the later of receipt of the invoice or the end of the prior monthly delivery period, with disputed payments subject to the Dispute Resolution process described below. |
| **Costs:** | Any charges of the CAISO and other third party costs and charges (including the cost of registering the RECs and other attributes) shall be the responsibility of Seller, except as addressed herein in the sections titled “Environmental Attributes,” and “Additional Products,” and subject to Change in Law. |
| **Additional Products:** | The Parties acknowledge and agree during the Delivery Term, new or incremental opportunities may arise for the sale or transfer of additional products from the Facility that are not currently known to or contemplated by Buyer or Seller, including reactive power, and additional ancillary services (collectively, “***Additional Products***”). In such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Additional Products, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Additional Products, the Parties shall determine the necessary actions and additional costs associated with such Additional Products. Seller shall have no obligation to alter the Facility or change the Operating Restrictions unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration. The Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Additional Products, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of the PPA, require Seller to make material modifications to the Facility or material upgrades or other material modifications to any interconnection or transmission facilities (other than those for which Buyer has agreed to fund), require Seller to reduce the generation of Facility Energy and delivery thereof to the interconnection point (or restrict Seller’s flexibility in offering, bidding, planning and scheduling such energy), or interfere with qualification, offering, bidding, planning, scheduling or other disposition of Environmental Attributes.  If the CPUC adopts a Slice of Day reform, or another similar type of reform that results in a change in the RA capacity product, these additional attributes will not be considered Additional Products. |
| **Facility Development Milestones:** | * [*mm/dd/yyyy*] – Demonstrate site control * [*mm/dd/yyyy*] – Execute Interconnection Agreement * [*mm/dd/yyyy*] – Procure major equipment * [*mm/dd/yyyy*] – Obtain federal and state discretionary permits * [*mm/dd/yyyy*] – Guaranteed Construction Start Date * [*mm/dd/yyyy*] – Obtain Full Capacity Deliverability Status * [*mm/dd/yyyy*] – Guaranteed Commercial Operation Date |
| **Compliance Expenditure Cap:** | If a change in law occurring after the Effective Date increases Seller’s known or reasonably expected costs and expenses to comply with Seller’s obligations under the PPA with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Environmental Attributes or Capacity Attributes (any action required to be taken by Seller to comply with such change in law, a “**Compliance Action**”), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all such Compliance Actions shall be capped at twenty-five thousand dollars ($25,000) per MW of Guaranteed Capacity, in the aggregate over the term of the PPA. If Buyer agrees to fund such Compliance Actions in excess of the foregoing limits, Seller shall take such actions. |
| **Change in Tax Law:** | In the event that as a result of a Change in Tax Law, Seller or the Facility becomes eligible for or entitled to any new Tax Benefits or changes to or extensions of existing Tax Benefits, Seller and Buyer shall share such additional Tax Benefit Amount on a 50%/50% basis by making an adjustment to the Contract Price for the remainder of the Delivery Term.  “**Change in Tax Law**” means (a) (i) any change in or amendment to the Code or another applicable federal income tax statute; (ii) any change in, or issuance of, or promulgation of any temporary or final regulations by the U.S. Department of the Treasury that would result in any change to the interpretation of the Tax Code or existing temporary or final regulations promulgated by the U.S. Department of the Treasury; (iii) any IRS guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin, notice, announcement, revenue ruling, revenue procedure, technical advice memorandum, examination directive or similar authority issued by the IRS Large Business and International division, or any published advice, advisory, or legal memorandum issued by IRS Chief Counsel, that applies, advances or articulates a new or different interpretation or analysis of any provision of the Code, any other applicable federal tax statute or any temporary or final Treasury Regulation promulgated thereunder; or (iv) any change in the interpretation of any of the authorities described in clauses (a)(i) through (iii) by a decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of federal income tax law, and (b) in the case of (a)(i) through (iv), such change or new or different interpretation, as applicable, occurs between the Execution Date and before the end of the Congress in session when the Commercial Operation Date occurs.  “**Tax Benefits**” means any state, local and/or federal tax benefit or incentive, including energy credits determined under Section 45 or 48 of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production of renewable energy and/or the operation of, construction, investments in or ownership of the Facility (including any cash payment or grant). |
| **Force Majeure Event:** | “**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.  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 the Product at a lower price, or Seller’s ability to sell Product 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 Generating Facility or the Storage 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 Generating 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 Generating 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 Generating Facility, except to the extent expressly permitted as an extension pursuant to the Development Cure Period under the PPA.  Within two (2) Business Days of commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of the Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim as to all periods prior to the delivery of a timely Notice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. |
| **Dispute Resolution:** | In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement any Party may deliver to the other Parties notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “**Dispute Notice**”). The senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the thirty (30) day period following receipt of the Dispute Notice in good faith negotiations to resolve the Dispute to the satisfaction of each Party. In the event a Dispute is not resolved by the expiration of the thirty (30) day period, then a Party may pursue any legal remedy available to it in accordance with the PPA. |
| **Applicable Law:** | California |
| **No Recourse to Members of Buyer:** | Buyer is organized as a Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members in connection with the PPA. |
| **Assignment:** | Except with respect to collateral assignment to support a financing by Seller of the Facility and assignment to an affiliate, prior written consent of the non-assigning party shall be required for assignment of any interest in the PPA, including a change of control. |
| **Events of Default:** | Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the PPA, bankruptcy, and assignment other than as permitted by the PPA. In addition, it shall be a Seller Event of Default if Construction Start is not achieved within 120 days after the Guaranteed Construction Start Date or COD is not achieved within achieved within 60 days after the Guaranteed COD. |

**2. Additional Term Sheet Provisions.**

1. **No Obligation to Enter Into Proposed Transaction**. This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into a PPA with respect to the Proposed Transaction and does not obligate any Party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Buyer nor Seller 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 Buyer and Seller execute final definitive documents, enforceable in accordance with their terms.
2. **Other Agreements**. In connection with this Term Sheet, Respondent shall execute that certain Exclusive Negotiating Agreement (“**Exclusivity Agreement**”) with Buyer and provide a Shortlist Deposit (as defined in such agreement) of $4.00/kW to Buyer(s) 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 Deadline (as defined in the Exclusivity Agreement), as such Exclusivity Deadline may be extended pursuant to 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. **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 or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including email transmission of a PDF image) shall be the same as delivery of an original executed signature page.
7. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
8. **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 prior written consent of the other Party.
9. **No Consequential Damages**. NEITHER PARTY SHALL BE LIABLE TO THE OTHER 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.

IN WITNESS WHEREOF, the Parties have signed this Term Sheet effective as of the Effective Date.

|  |  |
| --- | --- |
| **SAN DIEGO COMMUNITY POWER, a California joint powers authority**  By:  Printed Name:  Title: | **[*RESPONDENT***]  By:  Printed Name:  Title: |
|  |  |
|  |  |