

**APPENDIX A**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**PRELIMINARY 2020 TERM SHEET**

**FOR**

[Developer Name]

Note: Where requested, Seller shall check appropriate box indicating whether Seller agrees or disagrees with provision as stated. If Seller disagrees, Seller shall provide description of specific point(s) of disagreement and proposed counterproposal, where applicable.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. **Date** | [Date] | |  |
| 1. **Buyer** | Southern California Public Power Authority, and, together with Seller, the “***Parties***” and each, a “***Party****.”* | |  |
| 1. **Seller** | [Owner’s Name, LLC] (**“**[\_\_\_\_\_\_\_\_\_\_\_\_]”) | |  |
| 1. **Name of Facility** | [Name of Facility] (the “***Facility***”), a [indicate resource type] generating facility with a net nameplate capacity of [\_\_\_\_] MW located in [county and state]. | |  |
| 1. **Agreement; Term** | The Parties intend to negotiate a Power Purchase Agreement by and between Seller and Buyer (“***PPA***”);  The term of the PPA shall be [\_\_\_\_\_] Contract Years from the occurrence of COD (“***Term***”). Contract Years shall be measured in calendar years but shall also include an initial stub year and a final stub year (each, a “***Contract Year***”). | |  |
| 1. **Effective Date** | The PPA shall become effective upon execution by both Seller and Buyer (the “***Effective Date***”).  Prior to execution of the PPA by Buyer, the Facility shall have received a final notice of determination under the California Environmental Quality Act (“***CEQA***”), the National Environmental Policy Act (“***NEPA***”) and/or other comparable environmental law of the state where the Facility is located. | |  |
| 1. **Technology** | [Type of facility, including major equipment and manufacturers, as well as tracking mechanism, if any] | |  |
| 1. **Product** | Seller shall sell to Buyer, and Buyer shall purchase from Seller, all Portfolio Content Category 1, a.k.a. Bucket 1, energy (per CPUC Section 399.16 (b)(1) (“***PCC1***”)) from the Facility, as well as any and all associated environmental attributes, capacity attributes, services and all ancillary products similar to the foregoing which are or can be, now and in the future, produced by or associated with the Facility, including, without limitation, renewable attributes; renewable energy credits (“***RECs***”); resource adequacy (“***RA***”) and local capacity requirement (“***LCR***”), if applicable to the Facility; capacity attributes as defined by the California Independent System Operator (“***CAISO***”); and any other future capacity value or renewable attributes (together, the “***Product***”). Seller will deliver LCR and RA system capacity, if any, to Buyer as of the commercial operation date (“***COD***”) until the end of the Term.  Seller acknowledges that PCC1-eligible energy products must be generated by a generation facility that has been certified (or satisfies all of the requirements to be certified and will be certified within six (6) month of the COD) as an eligible renewable energy resource facility by the California Energy Commission (“***CEC***”) and must be scheduled into a California balancing authority. Seller shall achieve such CEC certification within six (6) months after COD. | | Agree  Disagree  Comments: |
| 1. **Guaranteed Commercial Operation Date** | Seller anticipates achieving COD as of [Date]. Seller may achieve COD prior to the anticipated COD so long as Seller gives written notice thereof to Buyer not less than 12 months prior to such earlier COD, but in no event shall COD be achieved earlier than [Date]. Seller shall achieve COD no later than [Date] (the “***GCOD***”). | | Agree  Disagree  Comments: |
| 1. **Monthly Attestation Certification** | Seller shall include an Environmental Attribute Attestation or Bill of Sale in every monthly invoice. Seller shall confirm, on a monthly basis, its compliance with the PPA provisions related to delivery of RECs and deliver to Buyer the associated RECs certified by the CEC, which RECs must comply with all requirements of the most-current CEC RPS Guidebook. Seller shall promptly confirm that it has uploaded all RECs to the WREGIS System (“***WREGIS Certificates***”).  The PPA shall contain provisions pursuant to which Seller shall send Buyer monthly invoices setting forth prescribed information, including (among other items): (a) the total quantity of energy delivered in the prior month in MWhs and (b) the total quantity of WREGIS Certificates confirmed to have been credited to Buyer’s WREGIS account during the prior month. Buyer shall pay Seller for the delivered Product no later than the sixtieth (60th) day after receipt by Buyer of Seller’s invoice. | | Agree  Disagree  Comments: |
| 1. **Monthly Progress Reports; Operational Reports** | Prior to the Facility achieving COD, Seller shall provide Buyer with monthly progress reports advising Buyer of the current status of the development, construction, start-up and testing of the Facility, including any significant developments or delays and Seller’s estimate of any changes to the anticipated COD. If Seller anticipates that it will not achieve a milestone by the applicable milestone date set forth in Appendix 2, then Seller shall deliver to Buyer a remedial action plan that identifies (i) the anticipated period of delay; (ii) the basis for such delay; and (iii) a remedial action plan outlining the commercially reasonable steps that Seller is taking to address the delay and to ensure that future milestones, including the GCOD, will be achieved.  Following the achievement of COD, Seller shall provide monthly reports of past generation performance that include, but are not limited to: a Facility performance summary with month/year to date, Facility performance on MWh, capacity factor, comparison of actual vs. expected, availability, wind speed/average illumination, operational summary including weather for the month, reasons for downtime, scheduled maintenance and repairs; curtailment events; safety; and a summary of any environmental issues or concerns. | | Agree  Disagree  Comments: |
| 1. **Metering Connection** | Seller shall provide Buyer (including any of Buyer’s participating members) with a live data metering connection that may be accessed using the Inter-Control Center Communications Protocol (“***ICCP***”) as defined by the International Electrotechnical Commission. This ICCP connection enables the exchange of real-time and historical power system monitoring and control data, including measured values and accounting data. Metering shall comply with the most-current CEC RPS Guidebook. | | Agree  Disagree  Comments: |
| 1. **Point of Delivery** | The point of delivery for the Facility (“***POD***”) shall be the [Substation] in [County, State]. All transmission and ancillary service costs, including scheduling from the Facility to the POD and any transformer crossover fee for transmitting energy between substations, is included in the Contract Price. Buyer shall only be obligated to purchase and pay for energy delivered to Buyer at the POD, which energy shall be net of parasitic load, transmission and transformation losses in conformance with the latest version of the CEC RPS Guidebook.  If the Facility delivers energy through the CAISO system, the appropriate PNODE will be [provide POD].  If dynamic scheduling or pseudo-tie is required, the Parties shall allocate responsibility for the costs of any ancillary service costs here. | | Agree  Disagree  Comments: |
| 1. **Point of Interconnection** | The first point of Interconnection will be: [POI] | |  |
| 1. **Curtailment** | Seller shall provide two Contract Prices in Section 30:  1) Seller assumes Buyer has no economic curtailment rights; and  2) Seller assumes Buyer has the right to curtail the output of the Facility by an amount equal to up to 4% of the Annual Contract Quantity (as defined below and provided in Appendix 1) for each full Contract Year after COD, at no additional cost to Buyer and without additional compensation to Seller.  Buyer shall have the right to curtail the output of the Facility for economic or reliability reasons. Lost output due to an economic curtailment above the 4% threshold, including over-generation, shall be compensable by Buyer, to the extent of the actual curtailment, at the Contract Price, [plus a “gross-up” for lost production tax credits] (“***Compensable Curtailments***”). Reliability curtailments, to be mutually defined by the Parties, shall not be compensable by Buyer (“***Non-Compensable Curtailments***”). | | Agree  Disagree  Comments: |
| 1. **Guaranteed Generation** | The Facility shall generate no less than [80% -- for wind and solar][90% -- for base-load or other non-intermittent eligible renewable energy] of the expected annual energy generation from the Facility set forth in Appendix 1 (the “***Annual Contract Quantity***”), measured over each Contract Year beginning on the first full Contract Year occurring after COD (each, a “***Measurement Period***”), which amount shall be adjusted for (a) hours during which Seller is unable to generate, schedule or deliver energy to POD due to an event of Force Majeure (to be defined in the PPA); (b) Buyer’s failure to schedule the energy from the POD; or (c) periods during which generation or transmission is curtailed or interrupted for whatever reason on the Buyer's side of the POD, including but not limited to system emergencies, event of Force Majeure, reliability, congestion or over-generation (such amount, the “***Guaranteed Generation***”).  To the extent the Facility delivers excess energy in an amount between 105% and 120% of the Expected Annual Contract Quantity, Buyer shall pay Seller for each such MWh an amount equal to 40% of the Contract Price. Buyer shall pay Seller for any energy delivered in excess of 120% of the Expected Annual Contract Quantity in an amount equal to 25% of the Contract Price. | | Agree  Disagree  Comments: |
| 1. **Shortfall** | If the Facility delivers less than the Guaranteed Generation for any given Contract Year (a “***Shortfall***”), Seller shall cure such Shortfall by delivering to Buyer the equivalent replacement Product during the Contract Year immediately following the Contract Year in which the Shortfall has occurred (such Contract Year, the “***Cure Period***”). During any Contract Year that is a Cure Period, the Product delivered will not be counted toward the Shortfall from the previous Contract Year until such time as [80% -- for wind and solar][90% -- for base-load or other non-intermittent eligible renewable energy] of the Annual Contract Quantity has been delivered for the then-current Contract Year. If Seller does not cure the Shortfall within the Cure Period, Seller shall pay Buyer cover damages for any remaining Shortfall based on an energy index to be specified in the PPA within sixty (60) days after the end of the Cure Period. Notwithstanding the foregoing, Seller shall immediately pay Buyer cover damages for any Shortfall that occurs in a Contract Year that is the last year of an RPS compliance period.  Note: Some of Buyer’s members may opt for immediate payment of cover damages without allowing for a Cure Period. | | Agree  Disagree  Comments: |
| 1. **RPS and EPS Compliant** | The Facility shall be, at the time of COD, and shall remain throughout the Term (a) RPS Compliant (under CPUC Section 399.16 (b)(1), i.e., Portfolio Content Category 1 resource) and (b) EPS Compliant. Seller shall assume any risk that the Facility falls out of RPS compliance, or EPS compliance, as applicable, and shall bring the Facility back into RPS compliance, or EPS compliance, as applicable, should the Facility fall out of compliance with the RPS, or EPS, at any time after COD and throughout the Term.  Seller shall be responsible for any compliance obligations, and other regulatory or legal obligations associated with the Facility, including but not limited to costs and expenses incurred by Seller to third parties in connection with or related to environmental liabilities, losses, damages or costs, Greenhouse Gas Emissions Reporting, WREGIS, and CEC certification and verification (together, “***Seller’s Compliance Obligations***”).  If, after the COD and at any time during the Term, the Facility is no longer RPS compliant or EPS compliant, as applicable, then Seller shall: (a) first, take all commercially reasonable actions to bring the Facility back into RPS compliance or EPS compliance, as applicable, and (b) thereafter, take such actions as may be necessary to cause the Facility to remain RPS compliant and EPS compliant. If the Facility is still not RPS compliant or EPS compliant, as applicable, despite the actions of Seller under (a), then (c) Buyer shall pay Seller an amount determined by an energy index price to be specified in the PPA that Buyer shall pay Seller in lieu of the original Contract Price, which index price excludes the value of the environmental attributes. In no event shall the replacement Contract Price be more than the original Contract Price. The replacement Contract Price shall remain in place until such time as the Facility is brought back into RPS compliance or EPS compliance, as applicable. If either the RPS laws or EPS laws cease to be effective, or it becomes impossible for Seller to bring the Facility back into RPS compliance or EPC compliance, as applicable, Buyer may elect, at its sole discretion to terminate the PPA. | | Agree  Disagree  Comments: |
| 1. **Change in Market Structure** | If a change in the market structure renders the PPA or any provisions thereof incapable of being performed or administered, then Buyer may request that Seller enter into negotiations with Buyer to make the minimum changes to the PPA necessary to make the PPA capable of being performed and administered, while attempting to preserve, to the maximum extent possible, the benefits, burdens, and obligations set forth in the PPA as of the Effective Date. . | | Agree  Disagree  Comments: |
| 1. **Energy Imbalance Market** | Seller shall, at its sole cost and expense (i) design and thereafter at all times maintain the Facility in compliance at with the New Resource Implementation requirements (or the equivalent), and (ii) subject to then EIM Compliance Cost Cap, include in the design, construction and operation of the Facility any equipment or software that may be required to enable the Facility to participate in the EIM (or its equivalent). Seller shall register the Facility into the EIM. | | Agree  Disagree  Comments: |
| 1. **Right of First Offer and First Refusal** | Buyer shall have a right of first refusal and a right of first offer for any proposed sale of the Facility, or any interest held by Seller in the Facility, provided that this right of first refusal and right of first offer shall not apply with respect to the sale of interests in Seller solely in connection with a tax equity financing. | | Agree  Disagree  Comments: |
| 1. **Facility Purchase Option** | Buyer shall have the right to purchase the Facility by providing a tentative notice to Seller of its right to exercise its purchase option at the following times during the Term:   1. 1 year prior to the 7th anniversary of COD, with closing to occur on the 7th anniversary of COD; 2. 1 year prior to the 10th anniversary of COD, with closing to occur on the 10th anniversary of COD; 3. 1 year prior to the 15th anniversary of COD, with closing to occur on the 15th anniversary of COD; 4. 1 year prior to every subsequent five years after the 15th anniversary of COD until the end of the term of the PPA; and 5. Upon an event of default by Seller.   ((a) through (e) above, the “***Purchase Option***”).  An Option Agreement which shall be executed concurrently with the PPA shall specify that the fair market value of the Facility is to be determined after receipt of Seller’s updated disclosure schedules, which shall be provided within 45 days following receipt of a notice that Buyer intends to exercise the Purchase Option. The Parties shall establish the minimum, maximum, and final purchase prices, as well as other terms and conditions in the Option Agreement.  Seller shall provide two Contract Prices in $/MWh for bids with and without Facility Purchase Option in Section 30. | | Agree  Disagree  Comments: |
| 1. **Interconnection Agreement;**   **Full Capacity Deliverability (CAISO Projects)** | Seller shall have entered into a fully executed large generator interconnection agreement (“***LGIA***”) or small generator interconnection agreement (“***SGIA***”), as applicable, at the time of the Effective Date.  CAISO Projects only: The LGIA or SGIA with CAISO provides for energy and full capacity deliverability for the Facility in order for it to qualify for RA and LCR benefits, if applicable. Seller shall reasonably support Buyer in Buyer’s efforts to obtain LCR, if applicable. | | Agree  Disagree  Comments: |
| 1. **Site Control** | Seller shall have established, and shall maintain throughout the Term, site and resource control for the entire Facility (including all real property, water rights, easements, access and related rights, and including the Facility gen-tie, if applicable), pursuant to site lease agreements and easements or fee interests, all of which shall be valid for a period of not less than the Term. Seller shall provide copies of such interests in the Facility site to Buyer.  All such real property and associated rights shall be transferable to Buyer upon Buyer’s exercise of the Purchase Option.  In addition, Seller shall provide Buyer with step-in rights to cure any defaults arising under any leases or development agreement(s) for the Facility. | | Agree  Disagree  Comments: |
| 1. **Credit Support and Security** | Seller shall provide, or cause to be provided, as appropriate, a separate letter of credit (“***LOC***”) or cash, at the option of Seller (each, “***Acceptable Form of Performance Assurance***”) meeting the qualifications to be provided in the PPA.  An Acceptable Form of Performance Assurance shall be provided within ten (10) days following the Effective Date. The amount of the Acceptable Form of Performance Assurance for prior to COD shall be for a minimum amount equal to $100/kW.  An Acceptable Form of Performance Assurance securing performance after COD and for the Term shall be provided concurrently with the achievement of COD in an amount equal to $150/kW. For the avoidance of doubt, if a battery energy storage facility is included in the Facility, the nameplate capacity of the battery shall be included in such kW calculation.  All such Acceptable Form of Performance Assurance shall be promptly replenished in full at any time drawn upon by Buyer. | | Agree  Disagree  Comments: |
| 1. **Termination Rights** | Buyer shall have the unilateral right to terminate the PPA if:   * Seller fails to timely achieve any Key Milestone, provided Buyer shall not terminate during such time as Seller continues to pay Daily Delay Damages in accordance with the PPA; * Seller fails to obtain CEC certification within six (6) months following COD; * Seller defaults under the PPA and fails to timely cure such default during the applicable cure period(s) to be provided in the PPA; and * Buyer otherwise has a right of termination specified in the PPA. | | Agree  Disagree  Comments: |
| 1. **Delay Damages** | If Seller fails to timely achieve the Key Milestones designated in Appendix 2, including the milestone for achievement of COD by the GCOD, Seller shall pay liquidated damages to Buyer in an amount equal to the amounts indicated in Appendix 2 (the “***Daily Delay Damages***”). The amount of Daily Delay Damages shown in Appendix 2 shall reflect a fair and reasonable compensation for any loss that may be sustained as a result of Seller’s failure to timely perform. Seller shall be liable for Daily Delay Damages from the date of any missed milestone and every day between such date and the earlier of: (a) the date the missed milestone is achieved, or (b) the date, if any, on which the PPA is terminated by Buyer.  If Seller has failed to timely achieve multiple Key Milestones on any given day, Seller shall pay Buyer the aggregate amount of Daily Delay Damages for all of the Key Milestones that have not been timely achieved as of such date. | | Agree  Disagree  Comments: |
| 1. **Special Purpose Entity** | Seller shall be, as of the Effective Date, and shall remain throughout the Term, a bankruptcy remote special purpose entity, in conformance with the general requirements and standard structure of such an entity and the requirements to be set forth in the PPA. | | Agree  Disagree  Comments: |
| 1. **Assignment and Change in Control** | Seller shall not assign the PPA without the prior written consent of Buyer, other than that Seller may without consent assign the PPA for the sole purpose of financing the Facility to any project lender or a tax equity investor, provided that the terms of any such consent including all agreements thereto conform with the requirements of the PPA.  Buyer may assign the PPA to any of its creditworthy members.  Buyer’s consent shall be required prior to the occurrence of any change in control, as defined in the PPA. | | Agree  Disagree  Comments: |
| 1. **Contract Price** | The “***Contract Price***” shall be: (please provide all available pricing including with and without economic curtailment under Section 15; and available pricing including with and without facility purchase option under Section 22)  $\_\_\_\_/MWh with \_\_\_% annual escalation starting in Contract Year 2 after COD for \_\_ years  **AND/OR**  $\_\_\_\_\_\_\_/MWh fixed for the term of the PPA of \_\_\_ years  **AND/OR**  \_\_\_\_\_\_\_\_Index plus $\_\_\_\_\_ for \_\_ years and excess energy above  Seller shall include separate, reduced pricing for early energy delivery, startup and test energy, and expected delivered energy.  Separate pricing shall be provided for energy storage products. | |  |
| 1. **Future Phases; Additional Projects** | Where applicable, a provision will be included in the PPA that provides Buyer with a right of first offer to evaluate and negotiate a PPA and an Option Agreement for the output from any additional phases of the Facility, as well as any separate projects that are currently under development by, or will be developed by, affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities. In addition, should Buyer decline to purchase the output from any such additional project or projects, Seller shall covenant that it will not subsequently offer more favorable monetary terms to another buyer for the same without providing Buyer with a subsequent right to purchase the output for the more favorable price. | | Agree  Disagree  Comments: |
| 1. **Storage** | a) If storage is not included in the Facility: In recognition of emerging technologies and opportunities that will continue to evolve during the Term of the PPA, the PPA will include a provision that gives the Parties the right to incorporate the use of storage technologies into the Facility on terms and conditions that are acceptable to Buyer and Seller.  b) If storage is included in the Facility: The terms set forth in Appendix B, “Southern California Public Power Authority Battery Energy Storage System Specifications Projects Within LADWP’s Balancing Authority” shall apply only for LADWP proposed projects. | | Agree  Disagree  Comments: |
| **Accommodations to Financing Parties** | Where necessary and appropriate, Buyer shall enter into a reasonable consent and agreement with Seller and any project lender providing customary requirements with respect to financing of the Facility, including, among others, those relating to Parties’ cure rights and parties’ rights to assume the loan upon foreclosure. The Parties shall address such concerns in the PPA. For the avoidance of doubt, Buyer shall have no obligation to agree to any amendment to the PPA that is proposed in any lenders’ consent. | | Agree  Disagree  Comments: |
| 1. **Project Labor Agreement** | Seller shall describe to what extent a project labor agreement can be in place. | | Agree  Disagree  Comments: |
| 1. **Appendices** | Appendix 1: The Annual Contract Quantities shall be listed by Contract Year in Appendix 1 of this Term Sheet.  Appendix 2: The Milestone Schedule for the Facility shall be completed by Seller in Appendix 2 of this Term Sheet. | |  |
| 1. **Authorized Contact Information** | **SELLER:** Name:  Title:  Contact Information: | **BUYER:** Name:  Title:  Contact Information: |  |

Each of Seller and Buyer agree that this Term Sheet does not contain all of the requisite terms and conditions of a definitive PPA, and is not intended to create, nor does it create, a binding and enforceable commitment between the Parties. Each of Seller and Buyer agree that no binding contract will exist between the Parties until the Parties execute a definitive PPA. Each of Seller and Buyer agree that any costs or obligations incurred as a result of or during the course of negotiation or other associated work on this Term Sheet shall be the sole responsibility of each individual Party and shall not implicate the other Party for any costs whatsoever.

|  |  |
| --- | --- |
| **SELLER:** | **BUYER:** |
| Owner’s Name, LLC | **Southern California Public Power Authority** |
|  |  |
|  |  |
| By: | By: |
| Name: | Name: |
| Title: | Title: |

**Appendix 1: Annual Contract Quantities for**

**[Facility Name] (XXX MW)**

(Table To be completed by Seller)

|  |  |  |
| --- | --- | --- |
| **Contract Year** | **Expected Annual Contract  Quantity, MWH** | **Guaranteed Annual Contract  Quantity, MWH** |
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**Appendix 2: Milestone Schedule**

**(Table To be completed)**

\* Designates a Key Milestone

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Pre-COD** | | | | |
| **No.** | **Guaranteed Date** | **Milestone Description** | **Daily Liquidated Damages for Delay ()** | **Security deposit at milestone achievement** |
|  | 10 days following Effective Date | Provision of development security |  |  |
|  | Earlier of 241 days following Effective Date  Or 12 months in advance of COD notification | Post-COD security |  |  |
|  | [Date] | Execute Site Control Agreements | $XX,000 for up to 180 days of delay |  |
|  | [Date] | Execute Interconnection Agreement | Mitigation Plan to complete |  |
|  | [Date] | Execute Facility financing documents | Mitigation Plan to complete |  |
|  | [Date}  Or an earlier date notified by the Seller | Begin construction of the Facility. | $XX,000 for up to 180 days of delay |  |
|  | [Date]  Or an earlier date notified by the Seller | GCOD | $XX,000 for up to 180 days of delay (up to amount of Facility development security) |  |
| **Post-COD** | | | | |
|  | Within 6 months after COD | Proof of CEC certification |  |  |
|  | On-going | Verification of WREGIS Registration (pre-COD Seller must provide sufficient evidence to Buyer that it has prepared and registered all required documents and have taken all necessary steps for final WREGIS approval, including the Notice of Substantial Completion or COD notice to WREGIS, as appropriate. Post-COD Seller must provide sufficient evidence to Buyer that substantial completion of the Facility is verified, and it has provided WREGIS with the notice of COD and are only waiting for WREGIS to approve the unit so that RECs can be created. |  |  |
|  | Monthly on-going | Seller to provide monthly reports of expected generation and indicators of when there may be a Shortfall. |  |  |
|  | Monthly on-going | Seller to provide monthly reports of past generation performance that include but are not limited to: Facility performance summary with month/year to date Facility performance on MWh, capacity factor, comparison of actual vs. expected, availability, wind speed/average illumination; operational summary including weather for the month, reasons for downtime, scheduled maintenance and repairs, curtailment events; safety and environmental summary. |  |  |

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