

EBCE-SJCE 2022 Long-Term Resource RFO Attachment E.5

Demand Response Resource Adequacy Agreement Term Sheet

This indicative term sheet (“**Term Sheet**”) is entered into as of _____, 2022 (the “**Effective Date**”) between [East Bay Community Energy Authority, a California joint powers authority (“**EBCE**”)] [City of San José, a California municipality, doing business as San José Clean Energy (“**SJCE**”)] and [Respondent Name] (“**Respondent**”) in connection with the 2022 Renewable Energy & Storage Request for Offers (“**RFO**”). This Term Sheet is intended to set forth the key commercial terms and conditions to be included in a proposed demand response Resource Adequacy agreement (“**DRRAA**”) between Seller and Buyer for the purchase and sale of the Product (the “**Proposed Transaction**”). Negotiation of the DRRAA is subject to Buyer selecting the Proposed Transaction for the negotiation shortlist, the terms and conditions of the RFO, timely execution of the Exclusive Negotiating Agreement (as defined below) and posting of the Shortlist Deposit (as defined in the Exclusive Negotiating Agreement) by Seller. Until a definitive Agreement is approved by Respondent’s management, [EBCE/SJCE]’s management and the [EBCE Board of Directors][San José City Council], and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other manner, under this Term Sheet.

1. DRRAA Terms and Conditions.

Seller:	[Seller Name, e.g., Project Company LLC] (“ Seller ”)
Buyer:	[East Bay Community Energy Authority, a California joint powers authority] [City of San José, a California municipality, doing business as San José Clean Energy] (“ Buyer ”). As used in the Agreement, Buyer and Seller are each a “ Party ” and collectively the “ Parties .”
Product:	“ Product ” means the Capacity Attributes from the Facility, which is a demand response resource and an incremental resource according to the provisions of CPUC D.19-11-016. Seller shall provide Buyer with the Product from the Facility in the amount of the Contract Quantity. If the Facility is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Replacement RA to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Replacement RA to fulfill the remainder of the Contract Quantity during such period, and such failure is not excused by Force Majeure, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of the DRRAA.
Contract Quantity:	“ Contract Quantity ” means [XX] MW.
Delivery Point:	The Facility shall be aggregated from within and interconnect to the [_____] DLAP.
Payment:	The monthly payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the monthly payment shall be adjusted to reflect any portion of Contract Quantity for the Showing Month that was not delivered in accordance with the DRRAA for such Showing Month.
Performance Guarantee:	The occurrence of any of the following shall constitute an Event of Default: (1) if, in any two consecutive Contract Years during the Delivery Term, Seller fails to deliver at least seventy percent (70%) of the Contract Quantity; or

	(2) if, Seller fails to delivery at least eighty percent (80%) of the Contract Quantity during any Contract Year during the Delivery Term.
CPUC Mid-Term Reliability Requirements:	<p>Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental zero-emissions capacity pursuant to CPUC D.21-06-035, OP 6. In accordance with such requirements, Seller represents that the Facility shall meet the following requirements:</p> <ul style="list-style-type: none"> (a) The Facility is an incremental resource according to the provisions of CPUC D.19-11-016; (b) The Facility shall emit zero-emissions; (c) The Facility shall be a demand response resource; (d) The Facility shall be available every day from 5 p.m. to 10 p.m. (the beginning of hour ending 1800 and the end of hour ending 2200), Pacific Time, at a minimum; and (e) The Facility shall be able to deliver at least five (5) MWh of energy per every MW of Contract Quantity. <p>Seller further represents that this Facility shall not be used for compliance with CPUC D.21-06-035 or CPUC D.19-11-016 by Seller or any third party.</p>
Monthly Settlement and Invoice:	<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>
Delivery Term:	" Delivery Term " means [XX] Contract Years. [<i>The Delivery Term must be at least 10 years.</i>]
RA Shortfall:	<p>The Parties acknowledge and agree that if Seller fails to provide Resource Adequacy Benefits as required hereunder (or Replacement RA in lieu thereof), then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer, and as Buyer's sole remedy, for the Capacity Attributes that Seller failed to convey to Buyer.</p> <p>RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "RA Deficiency Amount") equal to the product of the difference, expressed in kW, of (i) the Contract Quantity, minus (ii) the amount of Resource Adequacy Benefits able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as System Resource Adequacy Benefits and, if applicable, Local RA, (such difference, the "RA Shortfall"), multiplied by the sum of (a) the CPUC System RA Penalty and (b) CPM Soft Offer Cap; <i>provided</i> that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the RA Shortfall, provided that any Replacement RA capacity is (i) communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form attached to the DRRAA at least seventy-five (75) days before the compliance deadline for the applicable CPUC operating month.</p>
Facility Development Milestones:	<ul style="list-style-type: none"> • [mm/dd/yyyy] – TBD • TBD

<p>Progress Reporting:</p>	<p>After execution of the DRRAA, Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Facility Development Milestones; (b) identifies any missed Facility Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller’s corrective actions to achieve the missed Facility Development Milestones and all subsequent Facility Development Milestones by the Guaranteed Commercial Operation Date.</p> <p>In the event Seller misses any Facility Development Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the DRRAA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity.</p>
<p>Expected Commercial Operation Date:</p>	<p>Seller reasonably expects to achieve Commercial Operation by the following date [] (the “Expected Commercial Operation Date”).</p>
<p>Guaranteed Commercial Operation Date:</p>	<p>The “Guaranteed Commercial Operation Date” or “Guaranteed COD” means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis for the Development Cure Period.</p> <p>If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to the Buyer for each day of delay until Seller achieves COD (such period of days, the “Development Cure Period”).</p> <p>“COD Delay Damages” are equal to the Development Security divided by 60. COD 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 COD Delay Damages were paid in advance.</p> <p>Failure to achieve COD for any reason 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 DRRAA and receive the Damage Payment. For the avoidance of doubt, Seller’s liability for an Event of Default comprising the failure to timely achieve COD shall equal the sum of any Construction Delay Damages and COD Delay Damages that are due and owing, plus the Damage Payment.</p>
<p>Conditions Precedent to Commercial Operation Date (“COD”):</p>	<p>The COD shall be the later of (a) the Expected Commercial Operation Date or (b) the date when all of the following requirements have been met to Buyer’s reasonable satisfaction including Seller providing a certificate from an independent engineer to Buyer certifying to the following:</p> <ul style="list-style-type: none"> (i) The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the CAISO Grid; (ii) Seller has delivered the Performance Security to Buyer; and (iii) Seller has paid Buyer for all amounts owing under the DRRA Agreement, if any. <p>Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date.</p>
<p>Credit Requirements:</p>	<p>Seller shall post security as follows: Development Security – \$125/kW of Contract Quantity</p>

	<p>Performance Security – \$105/kW of Contract Quantity</p> <p>To secure its obligations under this DRRAA, 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>To secure its obligations under this DRRAA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.</p> <p>Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p>
<p>Workforce & Community Investment Obligations:</p>	<p>Seller must abide by any workforce and community investment obligation proposals included in its bid. Seller to provide commitments related to utilizing union workforce.</p>
<p>No Recourse to Members of EBCE:</p>	<p>EBCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. EBCE will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of EBCE's constituent members, or the officers, directors, advisors, contractors, consultants or employees of EBCE or EBCE's constituent members, in connection with this Agreement.</p>
<p>City of San José Designated Fund and Limited Obligations:</p>	<p>(a) <u>Designated Fund.</u> City of San José 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 Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) City of San José has created and set aside a designated fund (the “Designated Fund”) for payment of its obligations under the Agreement and (ii) 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, City of San José 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 City of San José’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. City of San José 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>(b) <u>Limited Obligations.</u> City of San José’s payment obligations under the Agreement are special limited obligations of City of San José payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non-</p>

	San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.
Limitations on Liability:	EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES SET FORTH IN THE AGREEMENT, OR PART OF AN INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.
Compliance with Laws:	Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; and conflict of interest. SJCE only: this also includes environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees.
Business Tax (SJCE only):	The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Delivery Term.
Assignment:	Neither Party may assign the Agreement or its rights or obligations under the Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, that Seller has the right to assign the DRRAA as collateral for any financing or refinancing of the Facility without the consent of Buyer. Any direct or indirect change of control of Seller or Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. 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 DRRAA, or to modify such DRRAA.
Force Majeure:	(a) " 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 the DRRAA or from complying with all or a portion of the conditions under the DRRAA 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.

- (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, or pandemic; 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. For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("**COVID-19**").
- (c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of the DRRAA at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under the DRRAA, 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; (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 due to a Force Majeure Event; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

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. 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.
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.
Duties to Take Actions to Allow Product Utilization	<p>Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Buyer’s (a) rights to the Contract Quantity for the sole benefit of Buyer or any Subsequent Buyer and (b) use of the Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing the Facility’s Scheduling Coordinator, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations under Applicable Laws, including to demonstrate that the Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to qualify as RA Capacity, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.</p> <p>If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.</p>
Changes in Law:	If a change in CAISO or CPUC requirements renders the Agreement incapable of being performed, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to the Agreement necessary to make the Agreement capable of being performed, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in the Agreement as of its execution. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to the Agreement or to resolve issues relating to changes to the Agreement, then either Party may resort to the formal dispute resolution process under the Agreement. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render the Agreement incapable of being performed or administered and (ii) all unaffected provisions of the Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.
Dispute Resolution:	EBCE: In the event of any dispute arising under the PPA, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the authorized members of the Parties’ senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute

	<p>quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days of initiating such discussions, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at law in or equity.</p> <p>SJCE: In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively.</p>
<p>Other Standard Contract Terms to be included in the DRRAA:</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 DRRAA, bankruptcy, assignment not permitted by the DRRAA, Seller failure to achieve Construction Start within one hundred twenty (120) days of the Guaranteed Construction Start Date, Seller failure to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, and other Events of Default expressly provided for in this Term Sheet.</p> <p><u>Indemnification (EBCE):</u> Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees collectively ("Indemnifiable Event") arising from negligence, willful misconduct, or breach of the PPA.</p> <p><u>Indemnification (SJCE):</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 of the Seller pursuant to the requirements of this Proposed Transaction, or (c) any breach of the Proposed Transaction.</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 Proposed Transaction.</p> <p><u>Governing Law:</u> State of California</p> <p><u>Venue:</u> [Alameda County] [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>“CAISO” means the California Independent System Operator.</p> <p>“CAISO-Controlled Grid” has the meaning set forth in the CAISO Tariff.</p> <p>“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.</p> <p>“Capacity Attributes” means attributes of the Facility that may be counted toward Compliance Obligations including: flexibility, dispatchability, physical location or point of electrical interconnection of the Facility; Facility ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or account constructs of the Facility, howsoever entitled, identified from time to time by the CAISO or Governmental Body having jurisdiction over Compliance Obligations.</p> <p>“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, or used for compliance purposes, including Resource Adequacy Benefits and Mid-Term Reliability Procurement Requirements.</p> <p>“Compliance Obligations” means, as applicable, RAR, Local RAR, FCR and Mid-Term Reliability Procurement Requirements.</p> <p>“Contract Year” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation.</p> <p>“Facility” means, collectively, the demand response resources described in Exhibit A. All demand response resources included in the list must meet the standards to qualify as incremental according to the criteria laid out in CPUC D.19-11-016.</p> <p>“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.</p> <p>“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a credit rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer.</p> <p>“Mid-Term Reliability Procurement Requirements” means the mandatory procurement obligations for incremental zero-emissions capacity pursuant to CPUC D.21-06-035 and CPUC D.19-11-016, as may be modified by the CPUC from time to time.</p> <p>“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.</p> <p>“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.</p> <p>“Replacement RA” means Resource Adequacy Benefits equivalent to those that would have been provided by the Facility with respect to the applicable RA Shortfall Month; provided that Replacement RA capacity</p>
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	<p>shall be required to comply with the requirements of D.21-06-035, and 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.</p> <p>“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.</p> <p>“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time.</p> <p>“San José Clean Energy” is the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.</p> <p>“Scheduling Coordinator” has the meaning set forth in the CAISO Tariff.</p>
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2. Additional Term Sheet Provisions.

- 2.1. **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 an DRRAA with respect to the Proposed Transaction and does not obligate [EBCE/SJCE], Respondent or any party to enter into the Proposed Transaction or execute any agreement, including the DRRAA, in connection with the Proposed Transaction. Neither Buyer nor Seller will be deemed to have agreed to the DRRAA or will be bound by any term thereof, unless and until authorized representatives of Buyer and Seller have executed final definitive documents, enforceable in accordance with their terms.
- 2.2. **Other Agreements.** In connection with this Term Sheet, Respondent shall execute that certain Exclusive Negotiating Agreement (“**Exclusive Negotiating Agreement**”) with [EBCE/SJCE] and provide a Shortlist Deposit (as defined in such agreement) in accordance with the Exclusive Negotiating Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusive Negotiating Agreement.
- 2.3. **Expenses.** Each of [EBCE/SJCE] and Respondent 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.
- 2.4. **Termination.** This Term Sheet will terminate upon the earlier of (a) execution of the DRRAA or (b) expiration of the Exclusivity Deadline (as defined in the Exclusive Negotiating Agreement), as such Exclusivity Deadline may be extended in accordance with the Exclusive Negotiating Agreement.
- 2.5. **Governing Law.** This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.

- 2.6. **Prior Agreements.** This Term Sheet supersedes all prior communications and agreements, oral or written, between and among [EBCE/SJCE] and Respondent regarding the subject matter herein contemplated.
- 2.7. **Assignment.** This Term Sheet will be binding upon and inure to the benefit of [EBCE/SJCE] and Respondent and their respective successors and permitted assigns. Neither [EBCE/SJCE] nor Respondent 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).
- 2.8. **No Consequential Damages.** IN NO EVENT SHALL [EBCE/SJCE] OR RESPONDENT OR ANY OF THEIR AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS TERM SHEET.

Note: SJCE does not sign/countersign term sheets but does require Respondents to submit fully marked up files.

IN WITNESS WHEREOF, EBCE and Respondent have by their duly authorized representatives executed this Term Sheet as of the Effective Date.

**EAST BAY COMMUNITY ENERGY AUTHORITY,
a California joint powers authority**

[RESPONDENT]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

[Exhibit A follows this page]

**EXHIBIT A
PRODUCT AND UNIT INFORMATION**

Product:

- RAR Attributes
- RAR Attributes with FCR Attributes
- LAR Attributes
- LAR Attributes with FCR Attributes
- FCR Attributes

Delivery Period:

Contract Quantity and Contract Price:

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo.)

Facility Information:

Resource Name	
Location	[] County, California
CAISO Resource ID	
SCID of Resource	
Facility NQC by month (e.g., Jan=50, Feb=65):	
Resource Type	DR
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	
TAC Area (e.g., PG&E, SCE)	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	DR