EBCE 2020 Renewable Energy & Storage RFO Attachment E.4

**Shaped Clean Energy**

This indicative term sheet (“**Term Sheet**”) is entered into as of \_\_\_\_\_, 2020 (the “**Effective Date**”) between East Bay Community Energy Authority, a California joint powers authority (“**EBCE**”) and [Respondent Name] (“**Respondent**”) in connection with the 2020 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 power purchase agreement or confirmation pursuant to the WSPP or EEI Master Agreements (the “**Agreement**”) between Seller and Buyer for the purchase and sale of the Product (the “**Proposed Transaction**”). Negotiation of the Agreement 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 EBCE management and the EBCE Board of Directors, 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. **Agreement Terms and Conditions**.

|  |  |
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| **Seller:** | [Seller Name] (“**Seller**”) |
| **Buyer:** | East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”). As used in the Agreement, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.”  |
| **Description of Facility:** | “**Facility**” “**Portfolio**” or “**Project**” means the following Carbon Free Source:  |
| **Product:**  | The “**Product**” is Carbon Free Energy. |
| **Seller’s Delivery Obligation:** | □ Firm□ As-Available□ Non-Firm□ Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Scheduling:** | □ IST □ CAISO Delivery |
| **Delivery Schedule:** |

|  |  |
| --- | --- |
| **Hour Ending** | **Contract Quantity (MW)** |
| 0100 - 0600 | [XX] |
| 0700 - 2200 | [XX] |
| 2300 - 2400 | [XX] |

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| **Contract Quantity:** | “**Contract Quantity**” means [XXXXX] MWh per calendar year. |
| **Contract Price:** | “**Contract Price**” means: $[XX.XX]/MWhFor each month during the Delivery Period, (a) Buyer will pay Seller an amount equal to the Contract Price multiplied by the Contract Quantity delivered in such month and (b) Buyer shall take title to the Energy associated with the Product at the Delivery Point and shall be entitled to (and Seller shall credit to Buyer) all revenues associated with the sale of such Energy in the CAISO. |
| **Delivery Period:**  | “**Delivery Period**” means:□ From and including Hour Ending (“**HE**”) 0100 on January 1, 20XXthrough and including HE 2400 on December 31, 20XX.□ Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Delivery Point:** | “**Delivery Point**” means the following: CAISO Balancing Authority with delivery at [\_\_\_\_\_]□ NP 15 EZ Gen Hub □ Other:  |
| **Seller Representations and Warranties:** | Seller represents and warrants the following:1. Seller has the contractual rights to sell all rights, title, and interest in the Product to be Delivered hereunder;
2. Seller has not sold the Product required to be Delivered hereunder, or any attribute thereof, to any other person or entity;
3. Seller agrees to execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Product for the sole benefit of Buyer or any subsequent purchaser; and
4. Title to the Product shall be deemed to pass from Seller to Buyer at the Delivery Point.
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| **Scheduling Requirements:** | e-Tagging. [*For out of state deliveries only*]. Seller shall generate all e-Tags required to schedule the Energy to the Delivery Point.Each e-Tag shall show the CAISO Balancing Authority as the last CA (Control Area) under ‘Physical Path’, and Buyer, Buyer’s scheduling coordinator, or a subsequent purchaser designated by Buyer in writing, as the last PSE (Purchasing Selling Entity) or ‘sink’ PSE under ‘Physical Path’ on each NERC e-Tag. Seller will be the Party delivering energy into CAISO.Seller will provide Buyer with NERC e-Tag and meter data for all Delivered Product. |
| **Eligible for Import RA:** | □ Yes□ No |
| **Monthly Settlement and Invoice:** | 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.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. |
| **Compliance Obligations and Reporting** | Compliance Obligation. Seller will be the electricity importer into California for purposes of the Cap and Trade Regulations. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation, if any, under the Cap and Trade Regulations associated with the Energy which Seller shall schedule into the CAISO Balancing Authority as part of the Product to be delivered. Compliance Reporting. Seller shall provide to Buyer an annual attestation confirming that the Seller delivered the necessary volume of Product after Seller’s annual verification is conducted, but no later than April 15thof the year following the year in which such Product was delivered. Upon Buyer’s reasonable request, Seller will provide Buyer with the CARB ID#’s, EIA # if applicable, historical emission factors and the allocated generation and meter data from the applicable Product Sources, but no later than April 15th of the year following the year in which such Product was delivered. In addition, Seller will work with Buyer to provide any additional information otherwise required by Applicable Law with respect to the Product and reasonably available to Seller, including documents that Buyer is required to maintain or provide to the California Air Resources Board (CARB) pursuant to the Cap and Trade Regulations or the CEC pursuant to the PCL. Seller shall maintain adequate records to reasonably assist Buyer in meeting any reporting, verification, transfer, registration, or retirement requirements of a governmental authority associated with the Agreement.If the Product is As-Available, Seller shall provide a non-binding forecast of expected Product deliveries thirty (30) days prior to each calendar quarter. |
| **Assignment:** | Neither Party may assign the Agreement without prior written consent of the other Party, which will not be unreasonably withheld; provided, that Seller has the right to assign the Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer.  |
| **No Recourse to Members of EBCE:** | 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 Term Sheet. 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 Term Sheet. |
| **Definitions:** | The following terms, when used herein with initial capitalization, shall have the meanings set forth below:“**As-Available**” means a Product for which, subject to the terms of this Agreement, (i) Seller is obligated to sell and deliver and (ii) Buyer is obligated to purchase and receive the Energy component of the Product from the Project whenever such Energy is capable of being generated from the Project.“**CAISO**” means the California Independent System Operator.“**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.“**Cap and Trade Regulations**” means the regulations entitled California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms set forth at Article 5 of Subchapter 10 of Title 17 of the California Code of Regulations. “**Carbon Free Energy**” means Energy deliveries from Carbon Free Sources.“**Carbon Free Source**” means any Specified Source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, sections 95100 to 95133). Carbon Free Source does not include any Renewable Energy Credits or any Energy source with an e-tag with a source point associated with a nuclear or coal-fired generating resource.“**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.“**Compliance Obligation**” has the meaning set forth by the Cap and Trade Regulations.“**Firm**” means, with respect to a transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure (EEI)/Uncontrollable Force (WSPP). In the absence of Force Majeure (EEI)/Uncontrollable Force (WSPP), the Party to which performance is owed shall be entitled to receive damages from the Party which failed to deliver/receive in an amount determined in accordance with the Agreement.“**Holiday**” means any day designated as a holiday by NERC.“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current. “**Off Peak**” hours means Mondays through Saturdays hours ending (HE) 0100-0600 and HE 2300-2400 PPT, and all day Sundays and Holidays.“**Peak**” hours means HE 0700-2200 PPT Mondays through Saturdays, excluding Holidays.“**Power Content Label or PCL**” means the annual CEC Power Content Label, as enacted by Assembly Bill 1110 (Statute of 2016), Assembly Bill 162 (Statute of 2009), and Senate Bill 1305 (Statutes of 1997).“**Scheduling Coordinator**” has the meaning set forth in the CAISO Tariff.“**Specified Source**” means a Project that is a “specified source”, as such term is defined in the Mandatory Reporting Rule.“**Unspecified Sources of Power**” means electricity that is not traceable to a specific generation source (e.g., what is commonly known as “market” or “system” power) by any auditable contract. |

1. **Additional Term Sheet Provisions.**
2. **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 Agreement with respect to the Proposed Transaction and does not obligate EBCE, Respondent or any party to enter into the Proposed Transaction or execute any agreement, including the Agreement, in connection with the Proposed Transaction. Neither Buyer or Seller will be deemed to have agreed to the Agreement 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.
3. **Other Agreements**. In connection with this Term Sheet, Respondent shall execute that certain Exclusive Negotiating Agreement (“**Exclusive Negotiating Agreement**”) with EBCE 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.
4. **Expenses**. Each of EBCE 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.
5. **Termination**. This Term Sheet will terminate upon the earlier of (a) execution of the Agreement 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.
6. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
7. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between and among EBCE and Respondent regarding the subject matter herein contemplated.
8. **Assignment**. This Term Sheet will be binding upon and inure to the benefit of the EBCE and Respondent and their respective successors and permitted assigns. Neither EBCE 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).
9. **No Consequential Damages**. IN NO EVENT SHALL EBCE 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.

[*Signatures appear on the following page*.]

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

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| **EAST BAY COMMUNITY ENERGY AUTHORITY,** **a California joint powers authority** | **[RESPONDENT]**  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |