BART 2017 Renewable RFP Exhibit C: Term Sheet

Renewable Energy Request for Proposals

**Power Purchase Agreement Term Sheet**

*This is an indicative Term Sheet (“Term Sheet”) that includes the key commercial terms and conditions that BART expects to be included in a power purchase agreement (“PPA”) that will be negotiated between selected Bidder(s) and BART as a result of the 2017 BART Renewable Energy Request for Proposals (“RFP”). It describes the sale from Seller to BART of energy and renewable energy credits associated with the output from the Facility. Until a definitive agreement is negotiated, approved by BART management and the BART 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. Note that all reference to days refers to calendar days, not business days.*

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| **Seller:** | [Seller Name]  *(if Seller is a Project LLC, please also provide parent name)* |
| **Buyer:** | San Francisco Bay Area Rapid Transit District (“BART”) |
| **Facility:** | The [\_\_\_] project, located in [County, State] as further described in Exhibit C-1. |
| **Installed Capacity:** | [\_\_\_\_] MWAC  For a new non-operational Facility, please indicate the expected Installed Capacity. |
| **Buyer’s Contract Capacity:** | [\_\_\_\_] MWAC  *(Note: Buyer’s Contract Capacity shall equal the Buyer’s Output Share multiplied by final Installed Capacity and shall not be less than 5 MW)* |
| **Buyer’s Output Share:** | [XX%]. |
| **Product:** | The Product includes all of the following:   1. Delivered Energy: Buyer’s Output Share of the as-available electric energy generated by the Facility, delivered to the Delivery Point, as measured by California Independent System Operator (CAISO)-approved meters, pursuant to the Scheduling Requirements; 2. Environmental Attributes: All renewable energy credits (“RECs”) and any other environmental attributes associated with Delivered Energy; 3. Capacity Rights: Buyer’s Output Share of all capacity rights, including resource adequacy benefits, if any, associated with the Facility; and 4. Ancillary Services: All ancillary services, products and other attributes, if any, associated with the Buyer’s Output Share of the Facility.   Unless otherwise agreed upon by the parties, the Product shall meet the Portfolio Content Category 1 specifications.  *(Note: Specifications for Portfolio Content Category 1 are described in California Public Utilities Code §399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders)* |
| **Contract Start Date:** | [\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_]  Contract Start Date shall not occur until COD has been declared.  *(Note: Contract Start Date shall not be earlier than 2019)* |
| **Delivery Term:** | [\_\_\_] Contract Years from the Contract Start Date, with each 12 month period following the Contract Start Date considered a “Contract Year.” |
| **Delivery Point:** | The Delivered Energy shall be delivered to [*Pnode/Trading Hub*] pursuant to the Scheduling Requirements.  *(Note: BART is requesting pricing for both Delivery Points in this RFP)* |
| **Commercial Operation Date (“COD”):** | The COD shall be 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 with respect to subparts (i), (iii), (iv) and (v):   1. Facility has met all Interconnection Agreement requirements and is capable of delivering energy from the Facility to the grid; 2. Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status (as defined in the CAISO tariff), if applicable; 3. Commissioning of equipment has been completed in accordance with the manufacturer’s specification; 4. 100% of Installed Capacity has been installed and commissioned; 5. Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Facility; 6. All applicable permits and government approvals required for the operation of the Facility have been obtained; 7. Seller has obtained all real property rights; 8. Security requirements for the Delivery Term have been met; and 9. Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer.   Seller shall provide notice of expected COD to Buyer in writing thirty (30) 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 COD** | The Guaranteed COD shall be [\_\_\_\_\_\_\_\_, 20\_\_].  The Guaranteed COD shall be extended on a day-for-day basis due to Force Majeure or delay caused by transmission provider (e.g., the CAISO), transmission owner, or Buyer. Such day-for-day extensions of the Guaranteed COD shall be no longer than 180 days on a cumulative basis.  If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay Delay Damages to the Buyer.  The “Delay Damages” shall be $250 per day per MW of Buyer’s Contract Capacity and shall be paid in advance on a monthly basis by Seller to Buyer. A prorated amount will be returned to Seller if COD is achieved during the month for which Delay Damages were paid in advance.  Buyer shall have the right to terminate the contract if COD is not met within 180 days of the Guaranteed COD. |
| **PPA Price:** | The PPA Price shall be $[\_\_\_]/MWh of Delivered Energy with an annual escalator or de-escalator of [\_\_\_]%.  Prior to COD, Buyer will purchase the Product at 75% of the PPA Price.  *(Note: A lump sum prepayment, deescalating price, and/or escalating price payment structure may be optionally offered, but is not required.)* |
| **Scheduling Requirements and CAISO Settlements:** | Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO), or “SC,” for the Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller’s failure to perform, (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity (as defined by the CAISO) from the Facility (including Non-Availability Charges (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller’s failure to comply with a timely Buyer Curtailment Order if such failure results in incremental costs to Buyer.  Seller shall provide to Buyer non-binding annual, monthly and day-ahead forecasts of Delivered Energy within a timeline that allows Buyer or Buyer’s agent the ability to meet the CAISO day-ahead scheduling protocols and deadlines. Outage and curtailment notifications will be required by Buyer as well as access to Facility generation data.  *(Note: Buyer will be responsible for the SC role where Buyer’s Output Share is 100%. If Buyer’s Output Share is less than 100%, then Seller will be responsible for performing the SC role and should describe its experience with providing or obtaining SC services in its RFP Response. As described in the Additional Services Proposals section of the RFP, there are also certain commercial structures whereby it is optimal for the Seller to be the SC for the Facility. Bidder shall describe the value of such arrangement in its RFP Response if proposing such a structure).* |
| **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 an agreed upon dispute resolution process. |
| **Output Guarantee** | The Seller guarantees that during the Delivery Term, energy deliveries for each Performance Measurement Period, shall meet or exceed the Guaranteed Output Threshold.  The “Guaranteed Output Threshold” shall be equal to the following listed percentages of the Annual Expected Output, based on technology type:   * Solar: 170% * Wind: 150% * Geothermal: 90% * Small Hydro: 170% * All other intermittent technologies: 170%   The “Performance Measurement Period” shall be each two year rolling period, commencing on the Contract Start Date for solar, wind, small hydro and all other intermittent technologies. For geothermal, the “Performance Measurement Period” shall be each one year rolling period, commencing on the Contract Start Date.  The “Annual Expected Output” is equal to Buyer’s Output Share of the Facility’s P50 expected annual output.  After each Performance Measurement Period, Seller shall calculate its performance for the Output Guarantee and provide sufficient detail to Buyer. For purposes of calculating the energy deliveries for the Output Guarantee, Seller shall add Delivered Energy and energy that was not delivered during Excused Hours. “Excused Hours” means hours where the Facility was not available due to Force Majeure, transmission provider’s (e.g., the CAISO’s), transmission owner’s, or Buyer’s failure to perform. |
| **Output Guarantee**  **Shortfall Damages** | In the event that the Guaranteed Output Threshold is not met for a Performance Measurement Period, (i) Seller shall calculate the “Shortfall Energy,” which shall be equal to the Guaranteed Output Threshold less the Delivered Energy less the energy not delivered during Excused Hours, and (ii) Buyer shall pay Shortfall Damages.  “Shortfall Damages” shall be determined by multiplying (x) Shortfall Energy, by (y) the positive difference, if any, of the Replacement Price less the PPA Price. The “Replacement Price” shall be the total price at which the Buyer would have to pay to purchase energy, RECs and capacity to replace the Shortfall Energy. |
| **Excess Energy** | If during any settlement interval, the Delivered Energy is greater than the Buyer’s Output Share of the Contract Capacity (“Excess Energy”), then the price paid by Buyer for the Excess Energy shall be Zero dollars ($0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point (“Delivery Point LMP”) is negative for a settlement interval with Excess Energy, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy. | |
| **Annual Excess Energy** | If during any Contract Year, the sum of the Delivered Energy and Deemed Generated Energy is in excess of 110% of the Annual Expected Output, then for each MWh of Delivered Energy or Deemed Generated Energy in excess of such threshold (“Annual Excess Energy”), the applicable price paid by Buyer shall be equal to the lesser of (a) the Delivery Point LMP applicable to the interval in which such Annual Excess Energy was delivered or deemed generated, as applicable, or (b) 75% of the PPA Price. | |
| **Curtailment Rights** | In the event the Facility is curtailed due to Force Majeure, by the CAISO or the transmission owner, or for any reason other than Buyer’s action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.  Notwithstanding the foregoing, Buyer may curtail deliveries of Delivered Energy at any time and for any duration, including if such curtailment is due to Buyer’s self-schedule (or lack thereof) or economic bid into the CAISO, and all such events (absent a simultaneous curtailment order described in the previous paragraph) shall be defined as “Buyer Curtailment Orders.” All energy not generated due to such events defined as “Deemed Generated Energy.” Buyer shall pay Seller the PPA Price for all Deemed Generated Energy, except as set forth in the Annual Excess Energy provision. | |
| **REC Tracking System** | The Seller shall transfer RECs associated with the Buyer’s Output Share of the generation from the Facility for each month via WREGIS pursuant to the timelines in WREGIS Operating Rules.  Each party shall be responsible for setting up an account with WREGIS. |
| **Progress Reporting** | After execution of the PPA, Seller shall provide a monthly report to Buyer, describing the progress towards meeting the Facility Milestones (as outlined in Exhibit C-1) and description of any remedies taken for missed milestones. Progress reporting shall also include reporting on small business activities pursuant to the Small Business section of the RFP.  In the event Seller misses any Key Facility Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the PPA and retain the Development Security as damages. |
| **Credit Requirements** | The Seller shall post security as follows:  Development Security   * $60,000 per MW of Buyer’s Contract Capacity * For the period between execution and COD   Delivery Term Security   * 5% of Total Project Revenues (based on Annual Expected Output) * From COD through the end of the Delivery Term   The form of security shall be a letter of credit or cash escrow.  Within five (5) Business Days following any draw by Buyer on the Delivery Term Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount. | |
| **RPS Compliance** | Seller shall ensure the Facility obtains CEC pre-certification prior to the COD, obtains CEC certification within 180 days of COD and shall use commercially reasonable efforts to maintain such CEC certification during the Delivery Term. Seller shall ensure that the Product qualifies as Portfolio Content Category 1 throughout the Delivery Term. If a change of law occurs after execution of the PPA that impacts Facility’s CEC certification or the Product’s qualification as Portfolio Content Category 1, then Seller shall use commercially reasonable efforts to comply with such change of law as necessary to maintain the Facility CEC certification and Product eligibility described above. For purposes of this section, commercially reasonable efforts shall be defined as $[\_\_] (*dollar cap to be negotiated*). |
| **Assignment** | Neither party may assign the PPA without prior written consent of the other party, which consent will not be unreasonably withheld or delayed.  Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer.  Seller shall pay Buyer’s reasonable expenses incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Facility. |
| **Other Standard Contract Terms to be included in the PPA:** | * Force Majeure: Definition will include provisions specific to a Facility’s ability to perform; will also include a termination right for extended force majeure that impacts either party’s ability to perform under the contract * Event of Default: Standard Events of Default (e.g., failure to pay any amounts when due), in addition to a Seller Event of Default if the COD is not achieved within 180 days after the Guaranteed COD (provided that termination damages for missing the Guaranteed COD Event of Default shall be equal to the Development Security amount). * Governing Law: State of California | |

**Exhibit C-1: Facility Details**

*[Note: For new currently non-operational Facilities, please provide expected information.]*

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| **Facility Name:** |  |
| **Facility** **Owner:** | (e.g. Project LLC or different long-term owner) |
| **Technology:** | (Include turbine type/solar panels/etc) |
| **Location:** | (More specific than the county) |
| **Commercial Operation Date** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ |
| **Installed Capacity (MWAC)** | (Total installed capacity and what share is being offered to Buyer) |
| **Annual Generation Volume (MWh)** | (Expected annual P50 output for the project, including any annual degradation factors) |
| **Point of Interconnection:** |  |

**Facility Requirements:**

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| --- | --- | --- |
| **Item** | **Type** | **Status** |
| Site Control | (lease, purchase option, etc) | (X% complete; expected completion date ) |
| Permitting | (BLM, State, County, etc) |  |
| Interconnection Status | (LGIA, SGIA, etc, including interconnecting entity) |  |
| Other Required Approvals | (consents, licenses, etc from governmental authority, etc) |  |
| Financing | (balance-sheet, tax equity, etc) |  |

**Facility Milestone Schedule**:

(Include schedule for Facility Milestones such as Executed GIA, receipt of discretionary permits, close of construction financing, procurement of key equipment, Notice to Proceed, Expected COD, Guaranteed COD, etc. For purposes of Progress Reporting above, “Key Facility Milestones” include only Executed GIA, Notice to Proceed, and Guaranteed COD.)