BUILD-TRANSFER TERM SHEET

MONTANA CREP PROJECT

This Build-Transfer Term Sheet (“*Term Sheet*”) for the 20\_\_\_ NorthWestern Energy Montana Community Renewable Energy Project reflects the intent of NorthWestern Corporation d/b/a NorthWestern Energy (“*NorthWestern*”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“*Developer*”) to enter into a definitive agreement specifying the terms and conditions of a turnkey build-transfer arrangement for the \_\_\_\_\_\_\_\_\_\_ project (the “*CREP Project*”) as described in the Project Description paragraph below. This Term Sheet reflects the intent of the parties to pursue a definitive agreement (the “*Build-Transfer* *Agreement*”) for the development, construction and transfer of ownership of the CREP Project to NorthWestern, and reflects the proposal submitted by Developer in response to NorthWestern’s Request for Proposals – Montana Community Renewable Energy Projects, issued May 6, 2019 (the “*20\_\_\_ CREP RFP*”), and other terms and conditions necessary for inclusion in the Build-Transfer Agreement. Developer and NorthWestern may hereinafter be referred to individually as a “*Party*” or together as the “*Parties*”.

**1. Definitive Agreement.** The Parties intend to complete and execute a Build-Transfer Agreement for the development, sale and transfer of the CREP Project in a timely manner following the execution of this Term Sheet.

**2. Term.** Either Party may terminate this Term Sheet by written notice to the other Party if, despite the exertion of commercially reasonable efforts the Build-Transfer Agreement is not entered into on or before \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

**3. CREP Project Description.** A \_\_\_\_\_ MW \_\_\_\_\_\_\_\_\_\_ generation facility to be built at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “*CREP Project Site*”), consisting of the land, equipment and infrastructure identified in Appendix A.

**4. Purchase Price.** The proposed purchase price NorthWestern will pay Developer for the CREP Project is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“*Purchase Price*”). Payment of the Purchase Price is subject to the following clarifications:

4.1 Developer acknowledges that NorthWestern will not deliver progress payments during the development, construction and commissioning of the CREP Project, and Developer is responsible for securing necessary construction financing;

4.2 NorthWestern will deliver the Purchase Price to Developer upon achievement of Substantial Completion (as such term is defined in the Build-Transfer Agreement);

4.3 NorthWestern will retain \_\_\_\_\_% of the Purchase Price until completion of the Punchlist (as such term is defined in the Build-Transfer Agreement);

4.4 Any Punchlist Item holdback will be delivered to Developer upon satisfaction of the requirements of Final Completion (as such term is defined in the Build-Transfer Agreement).

Montana currently does not assess sales tax, and the Build-Transfer Agreement will provide that title to all equipment and materials shall be transferred from Developer to NorthWestern in Montana at the CREP Project Site.

**5. Development Activities.** Developer shall use commercially reasonable efforts to continue the development of the CREP Project during the Build-Transfer Agreement negotiations in a manner consistent with achieving Substantial Completion on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20­­\_\_. These activities include, but are not limited to the following:

1. Completing an Interconnection Study, System Impact Study (and Facility Study, if applicable) with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “*Transmission Provider*”) and working to secure the Interconnection Agreement.
2. Conducting and delivering to NorthWestern environmental site studies to the satisfaction of NorthWestern showing no material environmental conditions in accordance with Section 13 of this Term Sheet**.**
3. Obtaining the necessary permits, approvals and authorizations from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County or other applicable federal, state or local governmental agencies for development and construction of the CREP Project, with acceptable terms and conditions for specified permits identified in the Build-Transfer Agreement.
4. Obtaining a “no hazards” determination from the Federal Aviation Administration with respect to the CREP Project Site, if required for the CREP Project.
5. Obtaining all necessary real property rights for the development, construction and operation of the CREP Project prior to the execution of the Build-Transfer Agreement. Lease option agreements do not need to be exercised prior to completion of the Build-Transfer Agreement, but Developer must have a unilateral right to exercise such options. Any easements for collection and/or interconnection facilities must be in place.
6. Providing additional data each month from the CREP Project Site for purposes of capacity factor validation.

The Parties will cooperate to continue these development activities and keep each other reasonably informed as to the status of each Development Activity. ***(Requirements may be modified to reflect the current development status of the CREP Project.)***

**6. Security.**

(a) Bid Security. Developer delivered to NorthWestern bid security in the amount of $2,000/MW in the form of \_\_\_\_\_\_\_\_\_\_ in compliance with the NorthWestern 2019 CREP RFP (the “*Bid Security*”). Developer shall maintain the Bid Security during the term of this Term Sheet.

(b) Performance Security. Within 10 calendar days of the execution of the Build-Transfer Agreement, Developer shall furnish performance security in the amount of $40,000/MW of the nameplate capacity of the CREP Project for the faithful performance of Developer’s contractual obligations (the “*Performance Security*”).

**7. MPSC Approval.** The CREP Project must satisfy cost-effectiveness requirements established by Montana law, to qualify as an eligible renewable resource, as such term is defined in §69-3-2003(10), MCA and satisfy the 25 megawatt nameplate capacity standard set forth in §69-3-2003(4), MCA. Within a commercially reasonable time after execution of the Build-Transfer Agreement, NorthWestern will submit a filing to the Montana Public Service Commission (“*MPSC*”) requesting advance approval of the contract. The Build-Transfer Agreement will include a condition precedent requiring a favorable determination from the MPSC by a specified date. While the Purchase Price appears to satisfy the requisite cost-effectiveness standard as of the effective date of this Term Sheet, Developer acknowledges that NorthWestern cannot enter into a definitive Build-Transfer Agreement if the CREP Project is not cost-effective. ***(To be inserted if NorthWestern requests MPSC approval of the Build-Transfer Agreement.)***

**8. Eligibility for the Production Tax Credit**. The Build-Transfer Agreement will be conditioned upon the Developer: (i) providing a tax opinion of qualified tax counsel that the CREP Project, when constructed, will fully qualify for the PTC; and (ii) placing into service the CREP Project prior to \_\_\_\_\_\_\_\_\_\_, 20\_\_ (or upon negotiated terms satisfying CREP and PTC requirements). The Build-Transfer Agreement will require Developer to maintain, at all times, the eligibility of the CREP Project for the PTC. If the Developer fails to maintain the eligibility of the CREP Project for the PTC during the development and construction of the Facility, or acts in a manner which jeopardizes the eligibility of the CREP Project for the PTC, NorthWestern may terminate the Build-Transfer Agreement without any liability to Developer. ***(To be revised as necessary based on specifics of the CREP Project.)***

**9. Transfer of Title.** Project titles, all assets, and rights shall be transferred from Developer to NorthWestern upon Substantial Completion after payment of the Purchase Price; provided Developer will retain necessary rights to complete the Punchlist.

**10. Interconnection. (*Section will be adapted to the specific interconnection progress of the CREP Project. Another section will be added if the CREP Project requires third party transmission service or integration services.)***

**11. Point of Delivery.** The Point of Delivery shall be as described in the interconnection agreement with the Transmission Provider or such point that is mutually agreeable to the Parties if delivery onto NorthWestern’s system is from a third party transmission provider.

**12. Future Development. (*Section will be adapted to the specific CREP Project conditions. The Build-Transfer Agreement will contain provisions ensuring future development of areas surrounding the CREP Project (if Developer retains adjacent property rights) does not impair or otherwise impact the CREP Project in any way. This includes development of upwind units or the sharing/use of collection and communications equipment in a way that impacts the output, the determination of the output, or the ability to reliably transmit the output on the transmission system.)***

**13. Environmental Site Studies.** Developer shall provide to NorthWestern all study work, reports, substantive e-mails and summaries of substantive phone conversations associated with all preconstruction environmental studies. Developer shall provide to NorthWestern, upon request, the ability to monitor all preconstruction environmental study activity. Such studies shall include studies or surveys to address U.S. Fish and Wildlife Service concerns applicable to the CREP Project, including, without limitation, those associated with eagles, other raptors and protected avian species.

Developer acknowledges that NorthWestern will consult with Montana Fish, Wildlife and Parks and United States Fish and Wildlife Service branches to address deficiencies discovered during environmental due diligence reviews of the CREP Project. These consultations will include the adequacy of preconstruction studies and avian/bat assessments, potential operational conditions and limitations, liability exposure, eagle “take” permits and any other concerns identified by the applicable agencies. Developer must authorize NorthWestern’s disclosure of all information received during the due diligence evaluation, as appropriate, and commit to deliver any supplemental data requested during such meetings. ***(To be revised as necessary based on specifics of the CREP Project.)***

**14. Development Milestones. *(With the exception of the Guaranteed Substantial Completion Date, dates below are subject to change.)*** The Parties acknowledge the following “*Development Milestones*” by the dates indicated recognizing that the CREP Project must achieve Substantial Completion by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

|  |  |
| --- | --- |
| **Development Milestones** | **Date** |
| Execution of Build-Transfer Agreement |  |
| MPSC Approval. |  |
| Substantial Completion Date |  |
| Guaranteed Substantial Completion Date |  |

**15. Delay Damages.** Subject to standard provisions in typical turnkey build-transfer contracts, if the CREP Project has not achieved Substantial Completion by the agreed upon Guaranteed Substantial Completion Date, Developer shall pay NorthWestern commercially reasonable liquidated damages for each day that Substantial Completion has not been achieved after the Target Substantial Completion Date.

**16. Operating Agreement.** Developer acknowledges and understands that NorthWestern may contract with a third party operations and maintenance provider (the “*NorthWestern Operator*”) to operate the CREP Project after Substantial Completion. Developer shall cooperate with NorthWestern’s request to provide information, equipment specification and maintenance manuals, original equipment manufacturer (*“OEM”*) site studies, data and any other commercially reasonable materials requested by the NorthWestern Operator or NorthWestern with respect to such operations and maintenance. NorthWestern reserves the right to select the major equipment OEM as the NorthWestern Operator or others in NorthWestern’s sole discretion.

**17. Retained Financial Benefits.** NorthWesternwill retain all PTCs, Investment Tax Credits, state or local production tax credits or other tax benefits associated with construction, operation or ownership of the CREP Project, or any federal, state or private cash payments, grants, subsidies or other financial benefits that result from the CREP Project.

**18. Environmental Attributes.** NorthWestern shall receive all current and future environmental attributes associated with the CREP Project, of any kind or nature, including but not limited to renewable energy credits or certificates, emission credits or allowances, carbon credits, or any other credit(s) or allowance(s) related to the electric energy generated without release of carbon-dioxide or other greenhouse gases.

Developer shall, using commercially reasonable efforts, cooperate with NorthWestern in registering the CREP Project as a renewable project with the Western Renewable Energy Generation Information System, commonly referred to as “*WREGIS*” (or its successor) in a timely fashion. This may include providing information to NorthWestern and or WREGIS prior to Substantial Completion as required by WREGIS for registration purposes.

**19. Termination.** Either Party may terminate this Term Sheet by written notice to the other Party if, despite the exertion of commercially reasonable efforts the Build-Transfer Agreement is not entered into on or before \_\_\_\_\_\_\_\_\_\_, in which case the only surviving obligation of the Parties will be the Confidentiality Obligations.

**20. Owner’s Engineer.** NorthWestern’s Engineer shall be allowed to monitor all phases of CREP Project preconstruction and construction including, without limitation, all permitting, environmental studies and siting, reviewing all meteorological and studies and analyses, testing procedures, testing, commissioning and start-up, and reasonable access to files, records and the CREP Project Site.

**21. Permits and Regulatory Approvals.** This paragraph applies to permits and approvals other than MPSC approvals. Developer shall at its sole cost, obtain all necessary permits and regulatory licenses and approvals for the development, construction and operation of the CREP Project, including any from the Montana Department of Natural Resources, Montana Department of Environmental Quality, and all applicable federal, state, and local building, construction, and land use permits. Developer shall assign or otherwise transfer any such licenses and permits to NorthWestern on or before Substantial Completion as appropriate to reflect NorthWestern’s ownership and operation of the CREP Project.

**22. Land and Title.** Consistent with “Transfer of Title” paragraph above, Developer shall convey Developer’s land rights necessary for the CREP Project Site to NorthWestern upon Substantial Completion, with marketable title and without liens, encumbrances or title defects, other than encumbrances agreed to by NorthWestern.

**23. Other Agreement Terms and Conditions.** The Build-Transfer Agreement will contain other customary terms and conditions substantially in accordance with those included in typical turnkey EPC contracts utilized in the independent power production industry.

**24. Management Approval.** The terms and conditions set out in this Term Sheet are intended to form the basis of the Build-Transfer Agreement. Any final definitive agreement(s) between NorthWestern and Developer will be subject to internal approvals required by each of NorthWestern and Developer.

**25. Exclusivity.** Developer shall not directly or indirectly solicit, initiate, encourage, or entertain any inquiries or proposals from, or discuss or negotiate with any third party, any business proposals for a generation project on the CREP Project site and NorthWestern shall have the exclusive right to have assigned to it Developer’s rights to the CREP Project Site until the Term Sheet is terminated.

**26. Confidentiality.** NorthWestern and Developer shall use commercially reasonable efforts to keep all proprietary information relating to the CREP Project confidential. Notwithstanding the foregoing, Developer understands that NorthWestern, as a public utility, is subject to regulation by the MPSC and that NorthWestern may be required to submit any and all information it receives from Developer related to the CREP Project to the MPSC. Developer is responsible for requesting a Motion for Protective Order from the MPSC in the event NorthWestern is required to disclose any proprietary information to the MPSC related to Developer or the CREP Project. The Parties agree that the Build-Transfer Agreement is not proprietary, and will be filed with the MPSC to obtain a determination that the CREP Project will be an eligible renewable resource.

**27. Non-binding Term Sheet.** This Term Sheet does not contain all of the terms and conditions necessary for a definitive final Build-Transfer Agreement between the Parties. It is intended as a guide for the purpose of informing both NorthWestern and Developer of important aspects of what may become a negotiated agreement. With the exception of the obligations set forth in the Term Sheet with respect to Exclusivity in Section 25, Confidentiality in Section 26, Governing Law in Section 28, and Communications in Section 29; i) this Term Sheet and any discussions concerning this Term Sheet do not create, and are not intended to create, a binding contract between the Parties with respect to the transactions described herein, and may not be relied upon by a Party as the basis for a contract by estoppel or otherwise with respect to any aspect of the CREP Project, and ii) unless and until the Build-Transfer Agreement has been executed, any actions taken by a Party to continue development of the CREP Project shall be at the Party’s own risk, as a binding commitment to proceed with the CREP Project can result only from the execution and delivery of the Build-Transfer Agreement.

**28. Governing Law.** This Term Sheet shall be governed by the laws of the State of Montana.

**29. Communications.** Except as may be required by law or regulation, neither Party shall issue any public statements or press releases regarding this Term Sheet or the transactions contemplated herein without the prior approval of the other Party, which approval shall not be unreasonably withheld or delayed.

**30. Counterparts.** This Term Sheet may be executed in counterparts and by facsimile or electronic transmission, each of which shall be considered as an original of this Term Sheet.

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| NorthWestern Corporation d/b/a NorthWestern Energy  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:  Title:  Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:  Name:  Title:  Date: |

**Appendix A**

[A detailed description of the CREP Project shall be inserted here]

The CREP Project shall include all equipment, facilities, property, contracts and rights to operate the CREP Project for its useful life. This shall include, but not be limited to the following:

1. Title in all equipment, including the generating equipment, collection equipment, interconnection equipment not owned by the Interconnection provider (which may also be NorthWestern), met towers, spare parts, tools, service equipment, etc.,
2. Title in all properties or land lease agreements suitable for the continued operation of the CREP Project and the interconnection and delivery of the output to the transmission system,
3. Assignment of the interconnection agreement(s), third party transmission agreement(s) as appropriate, and third party integration and balancing agreements,
4. Assignment of all permits and regulatory authorizations,
5. Assignment of all warranties in equipment,
6. Assignment of any ongoing maintenance agreements, data collection and analysis agreements, etc. and
7. Any other property as reasonably needed to support the continued operation of the CREP Project.