

Joint Development Agreement Termsheet

Full Description

I. GENERAL

A. Parties: [Name of Lead Party] (“_____”), and [Name of Other Party] (“Party B”), collectively with [Lead Party], the “Parties.”

B. Project: [Insert description of the Project.]

C. Scope of Development: The development activities will include all tasks required with respect to the development, financing, construction, operation and ownership of the Project and entering into other related documents and agreements. The Development Program and the Development Budget will be prepared, agreed-to, and attached to the Joint Development Agreement (the “Agreement”).

D. Non-Recourse Project Financing: The Parties intend to obtain non-recourse or limited recourse project financing for the Project and the Parties also recognize that the assets of the Project Company will be required as security by lending institutions pursuant to the Financing Agreements.

E. Term of Agreement: The Agreement shall be effective as of the date of execution thereof and remain in effect until the earliest of: (1) the effectiveness of the Shareholders Agreement, (2) the withdrawal of all but one of the Parties, (3) the mutual agreement of the Parties to terminate the Agreement, and (4) [Insert Date] (the “Drop Dead Date”).

II. MANAGEMENT

A. Management Committee: A Management Committee comprised of one Representative from each Party shall manage and oversee the overall Development Process and keep the Parties apprised of all material aspects of, and developments in connection with the

Project. If any Party withdraws from the Project or the Agreement in accordance with the terms of the Agreement, the Representative of such withdrawn Party shall be permanently removed from the Management Committee.

B. Management Decisions: The affirmative vote of all the Representatives shall be required for decisions of the Management Committee with respect to the approval of amendments to the Development Budget and to the Development Program, approval of Cash Calls in respect of Shortfall Amounts, and with respect to the terms and condition of the Shareholders Agreement and any material Project Document or Financing Agreement. If the affirmative vote of all the Representatives cannot be obtained by the Management Committee with respect to any issue stated above, then the issue shall be referred within 7 days for resolution to a meeting comprised of one senior executive management representative from each of the Parties, each such representative to have all requisite

authority to resolve the issue. All other decisions in respect of the Project shall require the affirmative vote of the Representatives who represent more than 50% of the Participation Interests. The Representatives of each Party shall cast one vote which shall be accorded the percentage weight equal to that Party’s Participation Interest in the Project.

C. Management Meetings: Meetings of the Management Committee shall be held at least [monthly] [every two months] [every three months] unless otherwise decided by the Management Committee, and at such

other times as may be determined by the

Chairman of the Management Committee, upon at least 14 days' prior written notice to all Parties.

III. DEVELOPMENT TEAM AND PROJECT MANAGER

A. Lead Developer [Lead Party] will act as the lead developer and coordinate the activities of the Parties.

B. Project Manager: [Lead Party] shall appoint and supervise the Project Manager. The Project Manager shall be responsible for the day to day implementation of the Development Process. The Project Manager shall keep the Management Committee

fully informed on all matters concerning the development of the Project and shall keep records of all material aspects of the Development Process.

C. Development Team: A development team drawn from representatives of the Parties shall be responsible for the development of the Project under the general supervision of the Project Manager and [Lead Party], and in accordance with the Development

Program and the provisions of the Agreement. The Parties shall nominate qualified personnel to serve on the Development Team when vacancies develop or when the Project Manager has determined there is a need to replace existing members.

D. Development Program: The Project Manager shall produce a program of activities for the development of the Project, which shall set forth the activities to be carried out during the Development Process, the date by which, or the period of time during which, each

such activity is to be carried out, and if applicable, which Parties or persons are responsible for which activities.

E. Development Budget: The Project Manager shall produce a budget for expenditures incurred or expected to be incurred by or on behalf of the Parties during the Development Process, which shall set forth a reasonably detailed break down of expected Development Costs and Deferred Costs.

IV. PROJECT COSTS

A. Costs Generally Each Party shall bear its own direct and indirect costs and expenses, including internal costs and expenses, incurred in connection with the Project, the Development Process, and the performance of such Party's obligations under the Agreement. No Party shall be entitled to reimbursement of any costs and expenses incurred in connection with the Project, except for reimbursement in accordance with the terms of the Agreement for Prior Costs, Deferred Costs, and Development Costs.

B. Prior Costs The Parties will establish a schedule setting forth the mutually agreed internal and third party costs and expenses related to the Project incurred prior to the date of the Agreement.

C. Deferred Costs: The Parties agree that the internal cost to each Party of providing a Representative to serve on the Management Committee, and other personnel working specifically on development of the Project and the travel expenses and disbursements of such personnel, will be funded by such 3 Party during the Development Process and accrued until Financial Close. Each Party shall document such Deferred Costs and submit an accounting of these costs to the Management Committee for approval on a monthly basis.

D. Development Costs: Development Costs shall be the reasonable and prudent costs incurred by the Parties to the extent set forth in the Development Budget and approved by the Project Manager in connection with the development of the Project including the costs of the Project Manager and the Development Team to

work specifically on the Project, out-of-pocket expenses, and third party costs incurred on behalf of the Development Team or the Parties.

E. Funding of Development Costs: Each Party shall pay its pro rata share of all Development Costs incurred by the Parties from and after the Effective Date. The Project Manager shall, prior to the beginning of each [quarter], determine the anticipated Development Costs for that [quarter] and notify each Party of its respective share of such Development Costs for that period (each a “Cash Call”). In determining the amount of each Cash Call, the Project Manager shall consider Development Costs projected to come due during the relevant period in accordance with the then current Development Budget, any cash remaining from prior Cash Calls and the amount of unreimbursed Development Costs each Party has expended. Each Party shall pay the amount of the Cash Call not later than 7 days after receipt of the Cash Call.

F. Reimbursement of Costs: Each Party shall send an invoice to the Project Manager monthly in respect of the Development Costs listed above. Payment will be made within 30 days of receipt of such invoices to the extent that funds are available. If a Party is in arrears in payment of a Cash Call, the Project Manager will be entitled to offset the arrears against any reimbursement of Development Costs or other amounts owed to that Party under the Agreement. At Financial Close, to the extent that funds are available and permitted to be used for such purpose, the Project Company shall make the following payments to the Parties: (1) reimbursement of all Prior Costs accrued by each Party; (2) reimbursement of all Deferred Costs; and (3) payment of a development fee to each Party.

V. PARTICIPATION AND PARTIES

A. Participation Interest: The Parties’ respective initial Participation Interests are as follows: [insert information]

B. Project Company: On or before Financial Close, [Lead Party] will establish a Project Company to own and operate the Project. Upon formation thereof, each Party shall assign to the Project Company all contracts, permits and other rights relating to the Project. Immediately prior to Financial Close, the equity ownership of the Project Company will be adjusted such that it is held by the Parties in the same proportion as their Participation Interests.

C. Affiliate Roles: [Lead Party] or its Affiliates shall provide operations, maintenance, and project management services for the Project. [Party B] and its Affiliates will have the opportunity to provide the fuel supply arrangements, provided such arrangements are commercially reasonable and cost competitive.

VI. REMEDIES

A. Voluntary Withdrawal: A Party may withdraw at any time by giving not less than 30 days’ written notice to the other Parties of the effective date of such withdrawal. No Party shall be permitted to withdraw if such withdrawal would result in an Event of Default by or disqualification of the remaining Parties or the Project Company.

B. Compulsory Withdrawal: Upon the occurrence and during the continuance of an Event of Default with respect to a Party, the Management Committee may require, by written notice, such Defaulting Party to withdraw from the Agreement and the Project.

C. Dilution If a Defaulting Party has not been required to withdraw from the Agreement and the Project, then immediately prior to Financial Close and upon a vote of the Party or Parties with a greater than a 50% Participation Interest, the Defaulting Party’s Participation Interest and its corresponding right to subscribe for equity in the Project Company shall be reduced such that each other Party’s Participation Interest corresponds to the percentage of Development Costs and Prior Costs paid by each Party in relation to the total of all Development Costs and Prior Costs expended by all the Parties.

D. Continuing Remedies Withdrawal of a Defaulting Party or reduction of its Participation Interest shall not affect the non-defaulting Party's right to damages for breach of contract and other rights and remedies under the Agreement and applicable law.

VII. CONFIDENTIALITY AND OTHER PROVISIONS

A. Confidentiality All Confidential Information shall be held by each Party in strict confidence and shall not be disclosed to any third party, except as may be reasonably required by such Party for the performance and fulfillment of its obligations under the Agreement. In addition, no Party shall release any press statement or any other public comment about the Project, the Development Process, the terms of the Agreement or the activities under the Agreement.

B. General Indemnification: Each Party shall indemnify, defend and hold harmless each other Party and the Project Company with respect to any and all claims made against any of them by any person claiming any interest, entitlement, fees, or costs related to the Agreement, the Project or the Project Company by or through such Party.

C. Assignment No Party may sell, assign or otherwise transfer, voluntarily or by operation of law, any part of its rights under the Agreement, or vest itself of control of an assignee of its interest, except an assignment of all such rights or a part thereof to an entity which is wholly owned by, or under common ownership with, such Party.

D. Governing Law The Agreement shall be governed by and construed in accordance with the laws of [insert jurisdiction]

E. Dispute Resolution In the event that any dispute, controversy or claim is unable to be resolved between the Parties within [30] [60] days after notice of such dispute, then such dispute may be referred to arbitration. All disputes hereunder shall be settled exclusively and finally by arbitration, irrespective of the magnitude thereof, the amount in dispute or whether such dispute would otherwise be considered justifiable or ripe for resolution by any court or arbitral tribunal. Each arbitration shall be governed by the arbitration rules of the International Chamber of Commerce. Each arbitration shall be held in [insert jurisdiction].

F. Consequential Loss No Party or its affiliates shall have any liability to any other Party or to the Project Company for any special or consequential loss or damage.

G. Exclusivity [Language to be supplied when concept agreed.]

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