



_____, 2021

RE: Exclusive Negotiating Agreement for PPA Negotiation for the [REDACTED] Project

Dear Respondent:

Central Coast Community Energy (“3CE”) is pleased to confirm that the Offer (as defined below) submitted by [REDACTED] (“Respondent”) for the [REDACTED] Project in the recent 2021 Locally-Sited Clean and Renewable Power Supply and Standalone Energy Storage Systems Request for Proposals (“2021 Local RFP”) has been placed on the shortlist for further negotiations. If you wish to proceed with negotiations for a power purchase agreement (“PPA”) under the terms and conditions set forth in this letter (the “Exclusive Negotiating Agreement”), please countersign where provided below and return it to PSolicitations@3CE.org no later than seven (7) business days after the date set forth above, along with the required items for short-listed Offers, as described in the RFP protocol. As used herein, “Offer” shall mean the Term Sheet provided by Respondent. 3CE and Respondent are each individually a “Party” and together the “Parties.”

I. Representations and Warranties

In accepting a position on the shortlist, Respondent hereby makes the following representations and warranties:

- (i) Respondent has not engaged and will not engage in oral, written, or any other form of communication with any other entity submitting an offer to 3CE in response to the 2021 Local RFP with respect to the terms of Respondent’s Offer or such other entities’ offer(s) in the 2021 Local RFP; and
- (ii) Respondent will promptly notify 3CE of any material change in circumstances that may affect Respondent’s ability to fulfill the terms of its Offer, at any time from Respondent’s submission of the Offer until 3CE’s execution of PPA, or Respondent’s withdrawal of the Offer.

Respondent understands and agrees that any breach by Respondent of the above representations and warranties is grounds for immediate disqualification of Respondent from the 2021 Local RFP.

II. Exclusivity

In consideration of its shortlist position, Respondent hereby grants 3CE exclusivity with respect to the Offer until the earlier of the following events (the “Exclusivity Deadline”):

1. 3CE's termination of negotiations of the PPA;
2. Ninety (90) days after the date of Respondent's execution of this Exclusive Negotiating Agreement.

The Exclusivity Deadline shall be extended automatically if the Parties are continuing to negotiate in good faith with respect to the Offer; provided, however, that after the initial ninety (90) day period, Respondent may terminate the Exclusivity Deadline on ten (10) business days' prior written notice to 3CE. Respondent agrees prior to the Exclusivity Deadline it shall not enter into any agreements nor otherwise discuss the sale of output from the Project with any third party under which it or its affiliates may agree, conditionally or unconditionally, to enter into a PPA for the output of the Project.

As a condition of 3CE's obligations under this Exclusive Negotiating Agreement, Respondent agrees to provide 3CE with a non-refundable deposit in the form of either (a) cash or (b) a Letter of Credit in the amount of XXXXXXXXXXXX DOLLARS (\$XXX,XXX) (the "**Shortlist Deposit**") within three (3) business days of Respondent's countersignature of this Exclusive Negotiating Agreement.

"**Letter of Credit**" means an irrevocable standby letter of credit, in a form reasonably acceptable to 3CE, issued either by (i) a U.S. commercial bank, or (ii) a U.S. branch of a foreign commercial bank that meets the following conditions: (A) it has sufficient assets in the U.S. as determined by 3CE, and (B) it is otherwise acceptable to 3CE in its sole discretion. The issuing bank must have a credit rating of at least A- from S&P or A3 from Moody's, with a stable or better outlook designation. All costs of the Letter of Credit shall be borne by Respondent. The Letter of Credit should be sent by overnight delivery to:

Central Coast Community Energy
Attn: Tiffany Law, Chief Financial & Technology Officer
70 Garden Court, Suite 300
Monterey, CA 93940

With electronic copy to: tlaw@3CE.org

Wire instructions will be provided to Respondent for cash deposits.

The Shortlist Deposit will be promptly returned to Respondent in its entirety under one or more of the following conditions: (i) following execution of the PPA and provision of the required security in accordance with the terms of such PPA, (ii) 3CE's rejection of Respondent's Offer following shortlist selection, (iii) failure of both 3CE and Respondent to agree on the terms of the PPA, or (iv) 3CE's termination of the RFP process. Notwithstanding the foregoing, Respondent hereby acknowledges and agrees that Respondent will forfeit its Shortlist Deposit and 3CE shall have the right to draw on the Shortlist Deposit in its entirety if (i) material misrepresentations of information related to the Offer are identified during the negotiating process, (ii) Respondent fails to comply with the terms and conditions of this Exclusive Negotiating Agreement or the 2021 Local RFP, including the RFP Protocol, (iii) Respondent unilaterally withdraws the Offer or attempts to



materially modify the terms of its Offer prior to the Exclusivity Deadline, or (iv) prior to the Exclusivity Deadline, Respondent enters into discussions with any third party under which such third party, or any of such third party’s affiliates may agree, conditionally or unconditionally, to enter into a PPA for the output associated with the Offer.

Respondent agrees that 3CE will not be obligated to enter into any transaction with Respondent until a final negotiated PPA has been submitted for, and received approval from the board of 3CE, as applicable, and fully executed by the parties thereto.

IN NO EVENT SHALL 3CE, 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 EXCLUSIVE NEGOTIATING AGREEMENT.

Very truly yours,

CENTRAL COAST COMMUNITY ENERGY,
a California Joint Powers Authority

By: _____
Name: Tom Habashi
Title: CEO

Approved as to form:

By: _____
Name: Robert M. Shaw
Title: COO and General Counsel
Acknowledged and Agreed:

[Respondent]

By: _____
Name: _____
Title: _____
Date: _____