

May \_\_, 2019

[Respondent] \_\_\_\_\_  
c/o \_\_\_\_\_  
Attention: \_\_\_\_\_  
[Address] \_\_\_\_\_  
[Address] \_\_\_\_\_

Subject: Exclusivity Agreement for PPA Negotiation for the [Project Name]

Dear [Respondent]:

San José Clean Energy (“SJCE”) is pleased to confirm that the offer (the “Offer”) submitted by [Respondent] (“Respondent”) for the [Project Name] (“Project”) in the recent 2019 Request for Offers for Long-term Renewables COD 2020-2021 (“RFO”) 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 below (the “Exclusivity Agreement”), please countersign where provided below and return it to [Email Address] no later than \_\_\_\_\_, 2019.

## 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 SJCE in response to the RFO with respect to the terms of Respondent’s Offer or such other entities’ offer(s) in the RFO; and
- (ii) Respondent will promptly notify SJCE of any material change in circumstances that may affect Respondent’s ability to fulfill the terms of its Offer, at any time from Offer submission to SJCE’s acceptance of the Offer, as evidenced by SJCE’s execution of PPA(s), 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 RFO.

## II. Exclusivity

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

1. SJCE’s termination of negotiations of the PPA;
2. Ninety (90) days after the date of Respondent’s execution of this Exclusivity Agreement.

By mutual agreement, the Exclusivity Deadline may be extended by Respondent and SJCE pursuant to a written addenda to this Exclusivity Agreement. Respondent agrees prior to the Exclusivity Deadline it shall not enter into any agreements nor otherwise discuss the sale of output of the Project associated with the Offer 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 associated with the Offer.

As a condition of SJCE’s obligations under this Exclusivity Agreement, Respondent agrees to provide SJCE with a deposit in the form of either (a) cash or (b) a letter of credit in a form reasonably acceptable to SJCE in the amount of [**\$3.00/kW times the Project’s Guaranteed Capacity**] (the “**Shortlist Deposit**”) within three (3) business days of Respondent’s countersignature of this Exclusivity Agreement. “**Letter of Credit**” means an irrevocable standby letter of credit, in a form reasonably acceptable to SJCE, 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 SJCE, and (B) it is acceptable to SJCE 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:

City of San José  
Attn: Jeanne Solé  
200 E. Santa Clara Street, Tower 14  
San José, CA 95113

With electronic copy to: *[Email Address]*

Wire instructions will be provided to counterparties upon award 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) SJCE’s rejection of Respondent’s Offer following shortlist selection, (iii) failure of both SJCE and the Respondent to agree on the terms of the Offer or PPA, or (iv) SJCE’s termination of the RFO process. Notwithstanding the foregoing, Respondent hereby acknowledges and agrees that Respondent will forfeit its Shortlist Deposit and SJCE 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 Exclusivity Agreement or the RFO, (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 of the Project associated with the Offer. The Parties agree that for purposes of this Exclusivity Agreement, the terms and conditions of the Offer are set forth in the signed term sheet provided to SJCE by Respondent.

Respondent agrees that SJCE 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 City Council of SJCE, as applicable, and fully executed by the parties thereto.

**IN NO EVENT SHALL EITHER PARTY, ITS 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 AGREEMENT.**

Very truly yours,

**CITY OF SAN JOSÉ**  
**a California Municipality**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and Agreed:

***[RESPONDENT]***  
**a *[State of Formation]* *[Entity Type]***

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_