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[**Date**]

[**Respondent Address**]

Attention:

Subject: Conditional Shortlisting for Innovation Solicitation

Regarding: [***Project Name*]**

Dear Respondent:

Clean Power Alliance of Southern California (“**CPA**”) is pleased to confirm that the offer submitted by [Company Name], (“**Respondent**”) for the [**Project Name**] (“**Project**”) (the “**Offer**”) in CPA’s Clean Energy Innovation Solicitation: Emerging Technologies and New Business Models(“**Innovation Solicitation**”) has been selected to be placed on CPA’s conditional shortlist (“**Conditional Shortlist**”).

If Respondent demonstrates to CPA’s reasonable satisfaction that Respondent has satisfied the Final Shortlisting Conditions (as defined in Section II below) on or before December 31, 2030 (“**Final Shortlist Deadline**”), CPA agrees to (i) enter into an exclusivity agreement under the terms and conditions set forth below with Respondent (the “**Exclusivity Agreement**”), (ii) subject to the approval of CPA’s Energy Resources & Planning Committee , place the Project on CPA’s final shortlist (“**Final Shortlist**”), and (iii) negotiate a long-term power purchase agreement on the terms and conditions set forth herein (“**Purchase Agreement**”).

If you wish to proceed with being placed on the Conditional Shortlist, please countersign where provided below and return it to innovation@cleanpoweralliance.org no later than seven (7) business days after the date set forth above, along with the required items for Conditional Shortlist offers, as described in the Innovation Solicitation protocol. Respondent and CPA are each a “**Party**” and collectively the “**Parties**”.

**I.** **Representations and Warranties**

Respondent hereby makes the following representations and warranties:

1. 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 CPA in response to the Innovation Solicitation with respect to the terms of Respondent’s Offer or such other entities’ offer(s) in the Innovation Solicitation or any other similar CPA energy procurement solicitation; and
2. Respondent will promptly notify CPA 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 CPA’s acceptance of the Offer, as evidenced by CPA’s execution of Purchase Agreement, 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 Innovation Solicitation. Respondent also acknowledges that CPA does not guarantee to allocate to the Project any commercial interest points (“**CIP**”) granted to CPA by the California Independent System Operator (“**CAISO**”) for assignment to projects in the interconnection study queue process (“**Interconnection Process**”).

**II.** **Final Shortlisting Conditions**

Upon Respondent demonstrating in writing (“**FSC Completion Notice**”) to CPA’s reasonable satisfaction that Respondent has satisfied each of the following conditions on or before the Final Shortlist Deadline (the “**Final Shortlist Conditions**”), and upon approval by CPA’s board, the Project shall be included in CPA’s Final Shortlist and the Parties shall commence negotiations of a Purchase Agreement:

1. Respondent has Site Control. “**Site Control**” means that Respondent or its affiliate either (i) owns or has the option to purchase a Site; (ii) is the lessee or has the option to lease a Site; or (iii) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site. “**Site**” means the real property on which the Project is or will be located, as described in the FSC Completion Notice and subject to the Site Conditions (as defined in the Term Sheet, attached as Attachment 1).
2. Respondent has applied for interconnection for the Project and such application has been accepted by the applicable interconnection provider (e.g. the CAISO and/or interconnecting utility) and the Project has received its Final Interconnection Facility Study Report or equivalent.
3. Respondent has provided to CPA a certificate of technology viability from an independent engineer acceptable to CPA that is based on a functional prototype or pilot project.

**III.** **Conditional Shortlist Termination**

CPA reserves the right to terminate the Innovation Solicitation and/or any or all of the Conditional Shortlist at any time in its sole discretion without liability to Respondent or any other person. CPA shall use commercially reasonable efforts to notify Respondent of any such cancellation in a timely manner.

**IV. Exclusivity**

Following satisfaction of the Final Shortlist Conditions, the Parties shall enter into an exclusivity agreement (“**Exclusivity Agreement**”) on the following terms:

1. Respondent shall grant CPA exclusivity with respect to the Offer until the earlier of the following events (the “**Exclusivity Deadline**”):
2. One hundred twenty (120) days from the date of the Exclusivity Agreement; or
3. Execution by both Parties of a Purchase Agreement.

Respondent shall not, prior to the Exclusivity Deadline, enter into any agreements or otherwise discuss the sale of any product, attribute or output from, or associated with, the Project (collectively “**Products**”) with any third party under which Respondent or its affiliates agree, conditionally or unconditionally, to enter into a Purchase Agreement for such Products. The Exclusivity Deadline may be extended by mutual agreement by the Parties.

1. Respondent shall provide to CPA a deposit in the form of either (i) cash or (ii) a Letter of Credit (as defined below) in a form reasonably acceptable to CPA in the amount of **$3.00/kW times the Project’s guaranteed capacity** (the “**Shortlist Deposit**”) within 3 business days of Respondent’s countersignature of the Exclusivity Agreement. “**Letter of Credit**” means an irrevocable standby letter of credit, in a form reasonably acceptable to CPA, issued either by (x) a U.S. commercial bank, or (y) a U.S. branch of a foreign commercial bank that meets the following conditions: (1) it has sufficient assets in the U.S. as determined by CPA, and (2) it is acceptable to CPA 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 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:

CPA Attn: Vice President, Power Supply

Clean Power Alliance of Southern California

801 S Grand, Suite 400

Los Angeles, CA 90017

1. The Shortlist Deposit will be promptly returned to Respondent in its entirety under one or more of the following conditions: (i) following execution of a Purchase Agreement and provision of the required security in accordance with the terms of such Purchase Agreement, or (ii) the Parties have not executed a Purchase Agreement on or before the Exclusivity Deadline, or, (iii) CPA’s termination of the Innovation Solicitation process by providing written notice to all respondents in the Innovation Solicitation with exclusivity agreements then in effect (including Respondent) that CPA is terminating the Innovation Solicitation.
2. Notwithstanding anything contained in this Exclusivity Agreement, Respondent hereby acknowledges and agrees that Respondent will forfeit its Shortlist Deposit and CPA shall have the right to the Shortlist Deposit in its entirety without further notice to Respondent under one or more of the following conditions: (i) material misrepresentations of information related to the Offer are identified during the term of the Exclusivity Agreement (ii) Respondent fails to comply with the terms and conditions of this Exclusivity Agreement or the Innovation Solicitation, including but not limited to the Innovation Solicitation Protocol, (iii) Respondent unilaterally withdraws the Offer or attempts to materially modify the terms of its Offer, in each case 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 long-term purchase agreement for any Products. This section II(d) shall survive the term or any Exclusivity Deadline of this Exclusivity Agreement.

**IV.** **Purchase Agreement Key Terms and Conditions**

Following execution of an Exclusivity Agreement, the Parties agree to negotiate in good faith a Purchase Agreement that includes the key terms and conditions as set forth in the Term Sheet attached hereto as Attachment 1.

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

Very truly yours,

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

**a California Joint Powers Authority**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Acknowledged and Agreed:

Respondent

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT 1**

**TERM SHEET**

|  |  |
| --- | --- |
| **Description of Facility:** | A [XX] MWAC [describe technology] project (the “**Facility**”), located in \_\_\_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_\_\_. |
| **Site:** | “**Site**” means the real property on which the Project is or will be located. The Site is located at:  Address:  Longitude and Latitude:  Parcel Number(s):  Additionally, Seller agrees to the following conditions (“**Site Conditions**”):   1. The Facility will be built and located on a brownfield Site. 2. The Facility will be located outside any designated high-conflict area. 3. Seller shall implement measures to accomplish the following objectives:    1. Protection of sensitive biological resources, including habitats of endangered or threatened species;    2. Avoid disturbance and safeguard sites of archaeological or historical significance; and    3. Maintain integrity water resources, such as wetlands, floodplains, and groundwater recharge areas. |
| **Product:** | The “**Product**” includes all of the following: ***[NTD: Remove any items that are not applicable]***   1. Energy; 2. Green Attributes: Portfolio Content Category 1: All renewable energy credits (“**RECs**”) and any other environmental attributes associated with Facility Energy; 3. Future Environmental Attributes; 4. Capacity Attributes: All current or future capacity rights, including resource adequacy benefits, if any, associated with the Facility;   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 Price:** | The Contract Price shall be $[XX]/MWh. (with no escalation). |
| **Delivery Term:** | “**Delivery Term**” means [XX] Contract Years, beginning on the Commercial Operation Date. “**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date. |
| **Guaranteed Capacity:** | The Facility has a Guaranteed Capacity of [XX] MWAC, measured at the Delivery Point. |
| **Expected Energy:** | “**Expected Energy**” means[XXX,XXX] MWh during the first Contract Year and for each Contract Year thereafter during the Delivery Term.[[1]](#footnote-2) [*If there is an annual adjustment for degradation, this should be noted.*] |
| **Delivery Point:** | “**Delivery Point**” means the Facility Pnode on the CAISO-Controlled Grid at the **[\_\_\_\_\_\_\_\_\_\_\_\_]** Substation. |
| **Guaranteed Construction Start Date:** | The “**Guaranteed Construction Start Date**” means **[\_\_\_\_\_\_\_\_\_\_\_\_\_]**, subject to extensions due to a Development Cure Period. “**Development Cure Period**” means day-for-day extensions to either or both, as applicable, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date due to Force Majeure, delays in obtaining Material Permits, and in the case of the Guaranteed Commercial Operation Date, interconnection delays or delays caused by Buyer’s failure to make the necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date. The Development Cure Period shall be no longer than one-hundred eighty (180) days on a cumulative basis (other than due to Buyer’s failure as described above).  Seller may elect to pay delay damages to Buyer to extend the Guaranteed Construction Start Date, (the “**Daily Delay Damages**”) for each day of delay Guaranteed Construction Start Date, in the amount equal to [$XXX/day, which is equal to the Development Security divided by 120]. The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date.  Failure to achieve Construction Start on or before the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain a damage payment in the amount of the Development Security. |
| **Guaranteed Commercial Operation Date:** | The “**Guaranteed Commercial Operation Date**” or “**Guaranteed COD**” means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis under the Development Cure Period or by paying Commercial Operation Delay Damages.  “**Commercial Operation Delay Damages**” are equal to [$XXX/day, which is equal to the Development Security divided by 90]. Commercial Operation Delay Damages shall be paid for each day of extension requested and shall be paid to Buyer in advance.  If Seller does not achieve COD by the Guaranteed COD, Buyer shall retain any Daily Delay Damages paid and Commercial Operation Delay Damages paid to Buyer.  Failure to achieve COD within ninety (90) days of the Guaranteed Commercial Operation Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security. |
| **Facility Development Milestones:** | * [*mm/dd/yyyy*] – Site Control * [*mm/dd/yyyy*] – Conditional Use Permit * [*mm/dd/yyyy*] – Facility Interconnection Study Results * [*mm/dd/yyyy*] – Execute Interconnection Agreement * [*mm/dd/yyyy*] – Procure Major Equipment * [*mm/dd/yyyy*] – Financial Close * [*mm/dd/yyyy*] – Construction Start * [*mm/dd/yyyy*] – Initial Synchronization * [*mm/dd/yyyy*] – Deliverability Network Upgrades completed * [*mm/dd/yyyy*] – CAISO Commercial Operation * [*mm/dd/yyyy*] – Expected Commercial Operation Date ***[NTD: This date shall be no later than December 31, 2035]*** |
| **Deliverability:** | Seller [shall/shall not] be required to apply for the Facility to have Full Capacity Deliverability Status and be providing Resource Adequacy Benefits from the Facility by the Commercial Operation Date. |
| **Workforce Agreement:** | Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws.  Prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.  Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller’s compliance with such agreement(s), and Seller shall provide to Buyer copies of any reports, certifications or similar communications with the IRS regarding labor information applicable to Seller, its Affiliates or suppliers and vendors in connection with any obtaining or substantiating tax incentives pursuant to the Internal Revenue Service Requirements. |
| **Site Control:** | Seller shall maintain site control of the Facility throughout the Delivery Term. |

1. NTD: Expected Energy to be based on the P50 value provided by the Facility’s resource study. [↑](#footnote-ref-2)