



[Month] [Day] \_\_, 2023

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

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

Dear [Bidder]:

Peninsula Clean Energy Authority is pleased to confirm that the offer (the “**Offer**”) submitted by [Bidder] (“**Bidder**”) for the [Project Name] (“**Project**”) in the recent Request for Offers for Fully Deliverable Renewable Energy + Storage (“**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 [PenCleanEnergyRFO@peninsulacleanenergy.com](mailto:PenCleanEnergyRFO@peninsulacleanenergy.com) no later than \_\_\_\_\_, 2023.

## I. Representations and Warranties

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

- (i) Bidder has not engaged and will not engage in oral, written, or any other form of communication with any other entity submitting an offer to Peninsula Clean Energy in response to the RFO with respect to the terms of Bidder’s Offer or such other entities’ offer(s) in the RFO; and
- (ii) Bidder will promptly notify Peninsula Clean Energy of any material change in circumstances that may affect Bidder’s ability to fulfill the terms of its Offer, at any time from Offer submission to Peninsula Clean Energy acceptance of the Offer, as evidenced by Peninsula Clean Energy’s execution of PPA(s), or Bidder’s withdrawal of the Offer.

Bidder understands and agrees that any breach by Bidder of the above representations and warranties is grounds for immediate disqualification of Bidder from the RFO.

## II. Exclusivity

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

1. Peninsula Clean Energy’s termination of negotiations of the PPA;
2. Ninety (90) days after the date of Bidder’s execution of this Exclusivity Agreement.

The Exclusivity Deadline shall be extended automatically, provided however that after 90 days, Bidder may at any time terminate exclusivity and cause the occurrence of the Exclusivity Deadline on ten business days prior written notice to Peninsula Clean Energy. Bidder 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 Peninsula Clean Energy’s obligations under this Exclusivity Agreement, Bidder agrees to provide Peninsula Clean Energy with a deposit in the form of either (a) cash or (b) a letter of credit in a form reasonably acceptable to Peninsula Clean Energy in the amount of **[\$3,000/MW of generation and storage capacity]** (the “**Shortlist Deposit**”) within three (3) business days of Bidder’s countersignature of this Exclusivity Agreement. “**Letter of Credit**” means an irrevocable standby letter of credit, in a form reasonably acceptable to Peninsula Clean Energy, 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 Peninsula Clean Energy, and (B) it is acceptable to PCE 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 Bidder. The Letter of Credit should be sent by overnight delivery to:

Peninsula Clean Energy  
Attn: Director of Power Resources  
2075 Woodside Road  
Redwood City, CA 94061  
(650)260-0005

With electronic copy to: [PenCleanEnergyRFO@peninsulacleanenergy.com](mailto:PenCleanEnergyRFO@peninsulacleanenergy.com)

Wire instructions will be provided to counterparties upon award for cash deposits.

The Shortlist Deposit will be promptly returned to Bidder 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) Peninsula Clean Energy’s rejection of Bidder’s Offer following shortlist selection, (iii) failure of both Peninsula Clean Energy and the Bidder to agree on the terms of the Offer or PPA, or (iv) Peninsula Clean Energy’s termination of the RFO process. Notwithstanding the foregoing, Bidder hereby acknowledges and agrees that Bidder will forfeit its Shortlist Deposit and Peninsula Clean Energy 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) Bidder fails to comply with the terms and conditions of this Exclusivity Agreement or the RFO, (iii) Bidder 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, Bidder 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 proposal materials provided to Peninsula Clean Energy by Bidder.

Bidder agrees that Peninsula Clean Energy will not be obligated to enter into any transaction with Bidder until a final negotiated PPA has been submitted for, and received, approval from Peninsula Clean Energy's Board of Directors, 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,

**PENINSULA CLEAN ENERGY AUTHORITY  
a California Joint Powers Agency**

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

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

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

Acknowledged and Agreed:

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

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

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

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

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

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

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

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

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