

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT ("Agreement") is entered into as of this 13th day of November, 2023 ("Effective Date") by and between the Board of County Commissioners of Bourbon County, Kansas (the "County"), a governmental entity in the State of Kansas, whose address for purposes of this Agreement is 210 S National Ave # 3, Fort Scott, KS 66701 and Hinton Creek Solar, LLC ("Developer"), a Delaware limited liability company", whose address is 700 Universe Boulevard, FEW-JB, Juno Beach, FL 33408. County and Developer may each be referred to herein individually as a "Party", and collectively as the "Parties".

RECITALS

WHEREAS, the County is a political subdivision organized and existing under the laws of the State of Kansas; and

WHEREAS, the County desires to promote the economic development of the County and the development of renewable energy within the County and the State of Kansas; and

WHEREAS, Developer intends to construct and operate a photovoltaic solar energy project, commonly referred to as the Hinton Creek Solar Project in one or more project companies or phases (each, a "Phase"), to be located on county and privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Project"); and

WHEREAS, the Project may be constructed at the sole discretion of Developer or its successors or assigns, in one or more phases over a period of years, with a total size, configuration, and phasing subject to change at the sole discretion of Developer; and

WHEREAS, the development and construction of a project of complexity, and level of capital investment of the Project can only be undertaken in a stable regulatory environment; and

WHEREAS, pursuant to K.S.A., Sec. 79-201 (Eleventh), property used to produce and generate electricity using renewable energy resources (including solar) is exempt from all property or ad valorem taxation for a period of ten (10) taxable years immediately following the taxable year in which construction or installation of such property is completed and upon filing of such application for exemption; and

WHEREAS, Developer, as a new member of the local business community, wishes to demonstrate good citizenship by making a commitment to assist the County in improving and maintaining a physical, business and social environment benefiting all members of the community by making contributions to the County, subject to the conditions set forth herein; and

WHEREAS, the County desires and supports the construction of the Project and is willing to accept such contributions subject to the terms of this Agreement, and

WHEREAS, the County's entry into this Agreement does not represent a predetermination of the Project's compliance with applicable permit requirements for the Project, and the Project must obtain such permits as may be required at the time it applies for the same.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Each of the Parties represents to the other that it has the requisite power and authority to enter into this Agreement.
2. Developer shall make the following contributions ("Contributions") to the County:
 - a. One "Initial Payment" of One Thousand Dollars (\$1,000) per megawatt ("MW") of installed photovoltaic capacity of the Project made within 30 days after Commencement of Construction. In the event that the Project is constructed in more than one Phase, each Phase shall make separate Initial Payment as set forth in this paragraph 1.
 - b. An "Annual Contribution" of One Thousand Five Hundred Dollars (\$1,500) per MW of installed photovoltaic capacity of the Project by January 15 of each year (the "Annual Contribution Date"), beginning on the first Annual Contribution Date following the Project's initial commercial operation date (the "Initial Contribution Date"), and continuing through the 9th anniversary of the Initial Contribution Date, for a total of 10 Annual Contributions. In the event that the Project is constructed in more than one Phase, each Phase shall make separate Annual Contributions as set forth in this paragraph 2.
3. Each such Annual Contribution shall be paid by Developer (or the then current owner of the Project) to the County by wire transfer. Upon receipt of each Annual Contribution payment, the County Treasurer shall disburse such Annual Contribution to any taxing jurisdiction, general County fund, or specific fund or funds as may be directed by the County Commission from time to time; provided, however, that the County hereby acknowledges and agrees that (i) it is intended that this Agreement and the Annual Contributions contemplated hereunder constitute the only agreements relating to Annual Contributions or similar payments that the Developer (or the then current owner of the Project) will enter into with, and for the benefit of, the County or any government or quasi-government entities within the County that would otherwise be entitled to tax revenues, and (ii) it is the County's intent to distribute the Annual Contributions hereunder in such a way as the County determines to be in the best interests of the residents of the County.
4. No Contributions shall accrue or be due or payable after January 1 of the first year that any applicable *ad valorem* property tax is assessed against the Project. If after execution of this Agreement any assessment, tax, levy, cost, or fee is imposed upon Developer (or the then current owner of the Project) or the Project by the County, the state of Kansas, or any governmental or

taxing subdivisions thereof, the amount of Developer's obligation to make Contributions hereunder shall be reduced dollar for dollar by the amount of any assessment, tax, levy, cost or fee imposed. Such assessments, taxes, levies, costs or fees shall include, but not be limited to: (a) real or personal property tax due with respect to property located in Kansas, owned by Developer (or the then current owner of the Project), and associated with or used in the operation of the Project; (b) any amount of excise, sales or use tax due with respect to (i) the electrical output of the Project or any proceeds derived therefrom; (ii) property purchased (by Developer or an unrelated party) for use in either the construction or enlargement of the Project or (iii) any purchase of machinery and/or equipment used either (x) as an integral or essential part of the integrated production operations of the Project or (y) for the handling, movement or storage of the output of the Project; (c) any Kansas state or local tax; or (d) any assessments, taxes, levies, costs or fees imposed upon the Project or the Developer (or the then current owner of the Project) that arise out of or relate to any statutory or regulatory adoption, amendment, revision, repeal, or deletion, any judicial opinion, invalidation, revocation, dicta, or other decision, or any governmental or quasi-governmental assessment, opinion, guidance or decision, which arises after the date of this Agreement, including any amendment to or revocation of K.S.A., Sec. 79-201 (Eleventh). In the event that such assessments, taxes, levies, costs or fees are imposed against Developer (or the then current owner of the Project) or the Project, Developer (or the then current owner of the Project) and the County agree to evaluate and pursue in good faith then-existing tax abatement or development financing programs to determine if there are alternative means to effectuate the intent of this Agreement with respect to a payment in lieu of such assessments, taxes, levies, costs or fees to the County in an amount equal to the Annual Contribution.

5. As of the date of this Agreement, the Developer has received all required County approvals and materially complied with all County laws, ordinances, and requirements ("County Laws") relating to the development, construction, or operation of the Project, including, without limitation, any such County Laws applicable to the permitting, development, construction or operation of solar energy generators, solar monitoring equipment, substations, electronic collection lines, battery storage, access roads, temporary construction areas, operations and maintenance facilities, and other infrastructures relating to the Project. In the event that the County enacts any new or amended County Laws in the future that prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project, any and all such County Laws shall exempt the Project from compliance therewith.

6. Each Party covenants, represents and warrants to the other Party that: (a) such Party has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement; and (b) this Agreement has been duly approved, executed and delivered by such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

7. An "Event of Default" shall occur upon failure by either Party to observe or perform any material covenant, condition, or agreement required of such Party under this Agreement for a period of sixty (60) days after written notice of such Event of Default has been given to the defaulting Party by the non-defaulting Party, unless: (a) during such sixty (60) day period the failure is cured by the defaulting Party; (b) during such sixty (60) day period the failure is waived in writing by the non-defaulting Party; or (c) if the failure stated in the notice cannot be corrected

within said sixty (60) day period and the corrective action is instituted within the sixty (60) day period and diligently pursued to completion. Whenever any Event of Default by Developer shall have occurred and be continuing, the County may terminate this Agreement and retain all past Contributions made to the County. Whenever any Event of Default by County shall have occurred and be continuing, Developer may terminate this Agreement and be relieved of all obligations hereunder to make future Contributions.

8. This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

9. This Agreement is not a binding obligation or commitment for Developer to construct the Project or any portion thereof, nor to continue any operation of the Project. If Developer should decide not to develop or operate the Project, the Parties agree that this Agreement shall terminate, except that if any Contribution has accrued by such time as Developer decides not to develop or operate or continue operation of the Project, Developer shall pay such Annual Contribution by the Annual Contribution Date.

10. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by electronic mail with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

To Developer:

Business Manager
Hinton Creek Solar, LLC
700 Universe Boulevard, FEW-JB
Juno Beach, FL 33408

Copy to:

Alan Claus Anderson
Polsinelli PC, 900 W 48th Place, Suite 900
Kansas City, MO 64112
(816)572-4761
aanderson@polsinelli.com

To County:

Bourbon County Clerk
210 S National Ave # 3
Fort Scott, KS 66701

11. Notwithstanding anything in this Agreement to the contrary, each of County and Developer hereby waives any claim that they may have against the other with respect to any consequential, indirect, punitive, special or incidental damage or lost profits.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions and each Party waives all right to trial by jury for all suits or causes of action arising out of this Agreement.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

14. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement.

15. Each Party will promptly, diligently and in good faith cooperate with the other Party during the Term, including without limitation delivering to the other Party upon request proof of compliance with this Agreement, estoppel certificates, and further assurances, documents and reasonably-requested agreements.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed in their respective names by their duly authorized representatives and dated their signatures as shown below.

DEVELOPER:

HINTON CREEK SOLAR, LLC,
a Delaware limited liability company

By: _____
Printed Name: _____
Title: _____


_____ Date

THE COUNTY:


THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

By: 

Name: Nelson Blythe, County Commissioner (District 1)

By: 

Name: Jim Harris, County Commissioner (District 2)

By: 

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

By: 



Reviewed and approved by:
