

DECOMMISSIONING AGREEMENT

THIS DECOMMISSIONING AGREEMENT (“Agreement”) is entered into as of this 31st day of October, 2024 (“Effective Date”) by and between the Board of County Commissioners of Bourbon County, Kansas (the “County”), a governmental entity in the State of Kansas and Hinton Creek Solar, LLC (“Developer”), a Delaware limited liability company. County and Developer may each be referred to herein individually as a “Party”, and collectively as the “Parties”.

RECITALS

WHEREAS, Developer intends to construct and operate a solar project in one or more phases (each, a “Phase”), commonly referred to as the Hinton Creek Solar Project, to be located on 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 “Solar Project”);

WHEREAS, the Solar Project will be located on property owned or controlled by the County and by private landowners within the County (collectively, the “Property”);

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and/or forms of landowner consent documents (each individually, a “Lease”) with the participating landowners within the Solar Project area (the “Landowners”), which may include provisions governing the decommissioning of Solar Project facilities located on such Landowners’ property;

WHEREAS, Developer desires to provide financial security to address the cost of decommissioning the portions of the Solar Project located on the Property in the form of a bond;

WHEREAS, for purposes of this Agreement, “Generating Units” are defined to include the energy collection cells, panels, mirrors, inverters, lenses and racking, and “Supporting Facilities” are defined to include any related foundations, battery storage, transformers, solar monitoring equipment, roads, and collector substations; and

WHEREAS, on November 13, 2023, the Parties executed a Decommissioning Agreement for the Solar Project (the “Prior Agreement”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

TERMS AND CONDITIONS

Article I.

DECOMMISSIONING AND RESTORATION SECURITY

Section 1.1 **Agreement to Decommission.**

(a) No later than ninety (90) days prior to the expiration of the Term or prior to termination of this Agreement by either Party pursuant to this Agreement, Developer shall present a decommissioning plan to the County for the portions of the Solar Project located on the Property. The decommissioning plan shall include the removal of all physical material related to the applicable Phase of the Solar Project located on the Property to a depth of thirty-six inches (36") and restoration of the surface of the Property to substantially the same or better condition it was in at the Effective Date so that the Property will be suitable for its prior use (reasonable wear and tear, condemnation, casualty damage and acts of God excepted) (all hereinafter referred to as "Restoration"). The Restoration shall be at Developer's expense and shall be completed within twenty-four (24) months after the expiration of the Term or termination of this Agreement by either Party pursuant to this Agreement.

(1) On the tenth (10th) anniversary of the commencement of commercial operation of each Phase of the Project and every fifth (5th) anniversary following the tenth (10th) anniversary for such Phase, Developer shall provide to the County an estimate of the projected salvage value of the equipment to be removed from the Project site for the applicable Phase and the projected cost to Developer of decommissioning and restoration upon the termination of commercial operation of the applicable Phase of the Project as determined by an independent engineer (the "IE") mutually agreeable to the County and Developer. If the projected costs of Restoration exceed the projected salvage value as determined by the IE, a credit support ("Decommissioning Surety") in the form of a bond from an institution with at least a "BBB" Standard and Poor's or "Baa2" Moody's or "A-" AM Best's financial rating or better for the benefit of the County shall be provided in an amount equal to the difference between the projected salvage value and the projected Restoration cost; however, at no point shall the amount of such Decommissioning Surety be less than one million dollars, escalating at two percent (2%) annually beginning on the first anniversary of the issuance of the Decommissioning Surety. Such Decommissioning Surety shall remain in place until such time as Developer's Restoration obligations for such Phase hereunder have been performed. Upon the earlier of the completion of the Restoration of the applicable Phase of the Project by Developer, or the termination of this Agreement (other than for a default of Developer in the performance of its Restoration obligations pursuant to this Agreement), such Decommissioning Surety shall terminate. For the avoidance of doubt, in the event of a repowering of the Project on any year after the commencement of commercial operation, the Decommissioning Surety amount will be re-calculated.

(2) The Decommissioning Surety shall remain in force until the completion of Restoration. Upon written request, no more than once in any calendar year, the County may request Developer provide County with information and documentation to confirm the existence and maintenance of such Decommissioning Surety in favor of County.

(b) The Decommissioning Surety amount shall be reduced by the amount of bond or other security, if any, that Developer is required to post by applicable governmental authorities for Restoration associated with the Solar Project improvements on the Property.

(c) Once Restoration for a Phase commences, Developer will, in a competent manner in accordance with industry standards, diligently, continuously and in good faith continue such Restoration. If Developer's ability to operate the Solar Project or performance of its obligations to decommission is prevented, delayed, or otherwise impaired at any time due to Force Majeure, then the time for performance shall be appropriately extended by the time of delay actually caused by the Force Majeure, provided that Developer shall promptly notify County and shall take immediate action to minimize such delay. For purposes of this Section 1.1(c), Force Majeure shall mean the acts of God, extreme weather, war, epidemic or pandemic, civil commotion, riots, damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes, terrorism, sabotage, or the effect of any law, proclamation, action, demand or requirement of any government agency.

(d) In the event Developer or its lenders fail to decommission any applicable Generating Unit in accordance with the requirements of this Agreement, the County may undertake the decommissioning of such Generating Unit. The County's election to decommission all or any portion of a Generating Unit shall not create an obligation to the Landowners, the Developer or any other third-party to complete the decommissioning of such Generating Unit. In the event the County elects to undertake the decommissioning of a Generating Unit, it may make a claim(s) upon the Decommissioning Surety for the expenses incurred, subject to the limitations set forth herein, or take any other action available in law or in equity. Any claim made by the County upon the Decommissioning Surety shall be limited to such expenses incurred by the County for the removal of all structures up to a depth of three (3) feet below the surface and the restoration of the soil and vegetation, including reasonable professional and attorney fees.

Article II.

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations, Warranties and Covenants of County. The County represents and warrants to Developer as follows:

(a) The County 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.

(b) This Agreement has been duly executed and delivered by the County and constitutes the legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement by the County will not violate any applicable law of the State of Kansas.

Section 2.2 Representations, Warranties and Covenants of Developer. The Developer represents and warrants to the County as follows:

(a) The Developer 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.

(b) This Agreement has been duly executed and delivered by Developer and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement by Developer will not violate any applicable law of the State of Kansas.

Article III.

TERM

Section 3.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate upon the earlier of the 50th anniversary of the date of Completion of Construction or such time as the Solar Project is fully decommissioned, unless earlier terminated or extended by the mutual agreement of the Parties.

Article IV.

MISCELLANEOUS

Section 4.1 No Waiver; Remedies Cumulative. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any Party of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 4.2 Notices. 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

Section 4.3 Amendments. 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. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by all of the parties hereto.

Section 4.4 Successors and Assigns. 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.

Section 4.5 Counterparts; Effectiveness. 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.

Section 4.6 Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the Parties as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 4.7 Headings. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 4.8 Governing Law. 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.

Section 4.9 Termination of Prior Agreement. The Parties hereby agree to terminate the Prior Agreement in its entirety without any liability or ongoing obligations for either Party, and to have this Agreement govern the obligations of the Parties going forward relating to the subject matter described herein.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK; SIGNATURE
PAGES FOLLOW.]**

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: Brandon Whisenhunt, 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:
