Public Service Commission of Wisconsin
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LOCAL OPERATING CONTRACT
BETWEEN HIGH NOON SOLAR ENERGY LLC,
COLUMBIA COUNTY, WISCONSIN, TOWN OF LEEDS, WISCONSIN, TOWN OF LOWVILLE, WISCONSIN, TOWN OF ARLINGTON, WISCONSIN
AND
TOWN OF HAMPDEN, WISCONSIN

This LOCAL OPERATING CONTRACT (hereinafter referred to as "LOC") is made and entered into by and between **HIGH NOON SOLAR ENERGY LLC** ("Project Owner"), **COLUMBIA COUNTY**, the **TOWN OF LEEDS**, the **TOWN OF LOWVILLE**, **TOWN OF ARLINGTON**, and the **TOWN OF HAMPDEN** as of _____, 2022. Collectively, Columbia County, the Town of Leeds, the Town of Lowville, the Town of Arlington, and the Town of Hampden are referred to as the "Local Governments". Collectively, the Project Owner and the Local Governments are referred to as the Parties.

Recitals

1. Project Owner desires to develop, construct, and operate an up to 300 megawatt ("MW") solar photovoltaic electrical generating facility along with all necessary associated facilities (the "Facilities"), such as underground collection lines, access roads, operating and maintenance facilities ("O&M"), battery energy storage systems ("BESS"), substations, and overhead transmission lines in the Local Governments (collectively, the "Project").

2. The Parties agree that it is in the best interest of each to memorialize the rights, obligations, and responsibilities of the Parties with respect to the Project's use of the Local Governments' roads, drainage systems, fencing, property management, and rights-of-way during construction and operation of the Project.

3. The Parties agree that the Project and all associated facilities, including (i) solar energy collection and electrical generating equipment; (ii) overhead and underground electrical distribution, collection, transmission and communications lines or cables, electric combiners, inverters, transformers and substations, energy storage facilities, and telecommunications equipment, switchyards, and other interconnection facilities; (iii) internal roads and crane pads; (iv) meteorological measurement equipment; and (v) control buildings, operations and maintenance facilities and buildings are under the jurisdiction of the Public Service Commission of Wisconsin ("PSCW"). This Agreement is conditioned on Project Owner's initial and maintained compliance with all applicable state, federal, and local laws and permit or approval requirements, including any requirements associated with the Certificate of Public Convenience and Necessity ("CPCN") issued by the PSCW and any requirements in permits issued by the Department of Natural Resources ("DNR").

4. The subjects of this Agreement shall be concurrent with the Project's CPCN, subject to the rights and remedies of the Local Governments expressly provided in this Agreement.

Agreement

Now, therefore, in consideration of the mutual promises, covenants, and agreements contained herein, the Parties to this LOC hereby stipulate and agree as follows:

1. **Approval.** The Parties understand and recognize that approval of the Project is under the jurisdiction of the PSCW and that the Project must seek concurrence and approval from the PSCW for substantive site design changes. At any time during the operation of the Project, if Project Owner proposes modifications to the Project that require a new permitting review from the PSCW, or upon extension of the Project beyond the current private lease and easement terms, Project Owner shall meet with the applicable Local Governments affected by such modifications or extension of the initial private lease and easement terms and negotiate in good faith any applicable changes to this LOC that are requested by the Local Governments due to such facility changes or extension of private lease and easement terms.

2. **Agreement Exhibits.** The following exhibits are attached to this LOC:

    a. Proposed Site Plan: Exhibit A is the proposed plan for above-ground facilities of the Project.
    b. Proposed Haul Route: Exhibit B is a map depicting proposed Project equipment Haul Routes.
    c. Construction Schedule: Exhibit C is the proposed Project schedule.
    d. Vegetation Management: Exhibit D is the proposed strategy addressing groundcover.
    e. Decommissioning Plan: Exhibit E is the proposed decommissioning plan.

    All Exhibits to the Agreement are incorporated herein and made part of the Agreement, with the force and effect as though fully set forth herein. The Parties acknowledge that the Exhibits are part of the concurrent jurisdiction of the PSCW and are subject to change. Any modified Exhibits will be discussed at the pre and post-construction meetings.

3. **Coordination/Planning.** Prior to the start of Project construction, Project Owner shall meet (the "pre-construction meeting") with the Local Governments' officials responsible for roads and drainage and local emergency responders to present final plans for use of public roads, location of equipment laydown yards, finalize construction scheduling, discuss safety practices, and coordinate local emergency response capabilities, as well as vegetation management, compaction mitigation, stormwater management and erosion control planning, engineering layouts, and general Project characteristics. Project Owner shall advise attendees of planned equipment and material delivery types and schedules. The Parties shall identify safety concerns and structural issues of any road or structure and propose mutually acceptable alternative routes or remediation methods for alleviating such concerns and issues.

    Project Owner and the Local Governments agree to communicate and cooperate in good faith concerning the safe construction and operation of the Project and preventing or correcting any adverse conditions that may be created by the Project. Project Owner shall consult with the Local Governments within one week of starting construction and shall also utilize all commercially reasonable efforts during construction so as to minimize resulting soil compaction. For Purposes of this Agreement, the term "commercially reasonable" shall mean done in good faith and corresponding to accepted commercial practices in the solar energy industry.

    At least 60 days following completion of construction, Project Owner shall meet (the "post-construction meeting") with Local Governments to discuss post-construction items including, but

not limited to, necessary post-construction vegetation management, stormwater management, and erosion control planning.

4. **Initial Evaluation.** At the pre-construction meeting, the Parties shall decide upon a scope of work for evaluating the condition of roads, structures, and drainage infrastructure immediately prior to construction, which evaluation shall be at Project Owner's expense. The Project Owner shall provide a complete copy of the evaluation ("Initial Evaluation") to the Local Governments prior to starting construction. Project Owner shall consider whether each segment of road that is to be used is likely to withstand the proposed construction traffic and propose reasonable upgrades, if applicable, in order to maintain safe driving conditions for the public.

5. **Use of Roads.** The Parties agree that the Project Owner and its successors, assigns, contractors, agents, and representatives may use public roads as part of the construction, operation, maintenance and repair of the Project. The Project Owner agrees to minimize the use of Local Governments' roads when practicable. The Parties acknowledge that in connection with construction, operation, and maintenance of electric collection lines, communications cables, and other equipment (the "Facilities"), that Project facilities may cross road rights-of-way and/or drainage systems. The Project Owner agrees that it shall seek and obtain all permits typically required of others, such as driveway permits and rights-of-way crossing permits. It is agreed that all road rights-of-way crossing shall be by underground borings, buried to a depth of at least six (6) feet, perpendicular to the right-of-way, plus or minus 30 degrees. All underground borings shall commence and terminate outside of the right-of-way.

   Following issuance of a Decision Order authorizing construction from the PSCW, Project Owner will engage a qualified third-party engineer ("Engineer") to prepare an "Initial Condition" report on all roads designated as "Haul Roads" in Exhibit B attached hereto. The Engineer will also be engaged to prepare a post-construction road condition report on the Haul Roads. These reports will serve as the basis for future discussions and decisions among the Parties about needed post Project construction repairs. Project Owner shall issue a "Request for Proposals" for road maintenance and restoration services during construction to a list of contractors which shall include, without limitation, local contractors familiar with conditions in the Project area. Throughout the construction of the Project, the Parties shall work cooperatively to maintain public road infrastructure in a safe condition for passage by the public.

   The Parties further agree that the construction process may cause wear, tear, and damage to the roads identified to be used, including the Haul Roads. The Parties agree, in lieu of seeking repair, restoration, or reconstruction of these roads following the completion of the Project's construction, that the Project Owner shall provide the Local Governments compensation in the form of a lump sum payment in an amount to be determined by the Parties, based on pre-construction and post-construction road condition analyses following general industry best practices for the repair or reconstruction of the impacted roads. Pre-construction and post-construction analysis shall include review of the surface and subsurface of the roads. The Local Governments shall relieve the Project Owner of any other repair or reconstruction obligations or responsibilities upon receipt of such lump sum payment. The Local Governments shall determine, at its sole discretion, how to utilize those funds for the repair of the impacted roads after their use for construction traffic for the Project ends. If the Local Governments elect to forego the lump sum payment, the Parties agree they may also utilize a contractor chosen and managed by Project Owner to complete necessary road repairs.

The extent of such repair will be negotiated at the post-construction meeting and will be based on the road condition analysis of the Engineer.

The Parties shall negotiate in good faith a similar road use and repair provision related to decommissioning, expansion, or repowering of the Project.

At or near the beginning of Project construction, Project Owner, at its expense, shall have signs put in place to identify the Haul Roads in a manner substantially similar to Badger Hollow. Throughout the construction of the Project, the Parties shall work cooperatively to maintain public road infrastructure in a safe condition for passage by the public. During the ongoing construction of the Project, Project Owner shall comply with all local ordinances related to road use, including seasonal weight restrictions. At its expense, Project Owner shall repair any significant damage caused by the Project Owner that jeopardizes the safety of the travelling public. In the event a hazardous road condition exists that presents a safety hazard to the public use of the road and is not promptly repaired by Project Owner within one week after receipt of notice of the hazardous condition, the applicable road authority may make emergency road repairs, or order emergency road repairs to be performed by qualified contractors, and Project Owner will promptly reimburse the road authority for reasonable emergency road repairs.

Project Owner shall be responsible for addressing applicable road use issues with other entities to the extent they have jurisdiction over roads to be used for the Project.

6. **Fencing.** Other than the fencing directly surrounding the Project substation, O&M, and BESS, the Project's perimeter fencing shall consist of "deer fencing" (wire mesh), which can be described in greater detail as a six- to ten-foot-tall woven wire partition with wooden posts.

7. **Vegetation Management Plan.** The Parties agree that the Project Owner has hired a regionally qualified consultant to create a ground cover and vegetation management plan for the construction and operation of the Project, attached as Exhibit D. Consultation shall occur with the Local Governments during the pre-construction meeting and post-construction meeting. Where commercially reasonable, the Project will utilize regionally appropriate plants and grasses across the Project's developed area and incorporate pollinator habitat. During Project operation, the Project Owner will spray, mow, and otherwise maintain all developed acreage inside the fence.

8. **Ownership.** This LOC shall be applicable to the present Project Owner, its successor and assigns, and to all parties to whom the Project Owner may transfer any or all of its ownership interests or contracts or subcontracts concerning its operations in and responsibilities concerning the Project and Facilities. Project Owner shall have the right to sell, assign, or lease all or portions of the Project or its Facilities to other parties and, in that event, such other parties shall, with Project Owner or, in the event of total assignment or transfer, in lieu of Project Owner, have the right, in the manner and to the same extent above, to operate the Facilities in, along, under, and across the same road rights-of-way and drainage systems. Project Owner, its successors, or assigns, shall, at all times and at its sole expense, maintain the Facilities in good condition and repair. In the case of any such sale, assignment, or lease of all or any portion of the Project or the Facilities, Project Owner shall assign its rights and obligations under this LOC and may do so without obtaining the prior consent of the Local Governments. Excluding any sale, assignment or lease in all or any portion of the Project to (a) WEC Energy Group, Inc., (b) Wisconsin Electric Power Company d/b/a WE

Energies, (c) Wisconsin Public Service Corporation, or (d) Madison Gas and Electric Company ("Proposed Owners") the project Owner shall notify the Local Governments of any and all proposed changes in owners or operation of the Project or Facilities. Any such sale, assignment, or lease of all or any portion of the Project or the Facilities shall include an explicit assumption by any such successors or assigns of any and all terms of this Agreement which continue to be active and applicable, proof of which shall be provided to the Local Governments at least sixty (60) days prior to the effective date of such proposed change in ownership or operation.

9. **Disputes.** Should a dispute arise between the Parties on whether any repair plan or lump sum payment adequately addresses repairs needed to the infrastructure of the Local Governments, the Parties agree that a final determination shall be made by a civil engineer licensed in Wisconsin and selected by mutual agreement. If the Parties cannot agree on an engineer, they shall each select an engineer and the two engineers shall select a third engineer within thirty days, and this selected third engineer shall be the engineer for settling such disputes. Compensation for the engineer that ultimately makes a final determination pursuant to this section shall be shared equally by the Parties.

10. **Cooperation.** Project Owner and the Local Governments agree to communicate and cooperate in good faith concerning the safe construction and operation of the Project and preventing or correcting any adverse conditions that may be created by the Project.

11. **Drainage Infrastructure.** If drainage infrastructure or systems, including culverts, are damaged by any cause connected with the Project, Project Owner shall restore the drainage infrastructure or system to pre-existing condition or better. "Pre-existing condition" shall mean the flow capacity existing immediately prior to the Project commencing construction. Project Owner is responsible for all expenses related to repairs, relocations, reconfigurations, and replacements of drainage infrastructure and systems that are damaged as a direct result of the Project.

12. **Replacement of Lost Property Tax Revenue.** Properties hosting qualifying utility generating facilities under Wis. Stat. 76 and approved by the Public Service Commission of Wisconsin are removed from the local property tax roll. The Local Governments will receive Utility Aid payments through the state shared revenue program. However, other local taxing bodies, such as school districts and fire departments are not provided alternative payments to compensate for lost property tax revenue. In the case of the Project, the following public institutions are currently receiving property tax revenue from land planned for inclusion in the Project:

    - Relevant School Districts
    - Relevant Colleges

    Project Owner will establish a program (the "Lost Revenue Program") to reimburse the listed taxing bodies for lost revenue following completion of the Project, when the specific, qualified utility properties are identified. The Lost Revenue Program will calculate the amount of lost revenue based on local tax rates for similar land and provide payment, including any future changes resulting from referendum. Payment amount for each taxing authority will be increased annually by Two Percent (2%).

Local Governments agree they will not attempt to re-assess the property hosting the solar facilities and will not endeavor to collect agricultural land conversion fees.

13. **Revenue Hold Harmless.** The Parties agree that the shared revenue payments payable to the Local Governments under current state law may be revised or revoked by future Legislatures. In the event that the shared revenue payments payable to the Local Governments are eliminated by the Legislature, the Project Owner will reimburse the Local Governments at the rate of $1,666.66 per installed MW and the County at the rate of $2,333.33 per installed MW, but only to the extent the amount promised is recoverable by the Project Owner through approval by the Public Service Commission of Wisconsin of rates under Wis. Stat. 196.20. The Project Owner's obligation to make such payments shall be suspended if the State adopts or implements a new mechanism to replace the Utility Aid Shared Revenue payments, to the extent that the new payment system provides payments equal or greater than the payments produced under the Utility Aid Shared Revenue formula. In such case of suspension of payments, the Project Owner's payment obligations as set forth herein will only be reinstated if such new payment system is eliminated by the Legislature.

14. **Public Safety and Emergency Medical Services.** Construction of a solar photovoltaic electrical generating facility does not create any unique or especially dangerous environments or situations for local emergency responders. Project Owner will require that all contractors on the site during construction meet all state, federal, and industry best practice standards for employee and public safety. Project Owner intends to request meetings with site area emergency response agencies to provide Project and facility familiarization and establish communication channels. Should any aspect of the Project construction or operations present unfamiliar equipment or situations for responders, Project Owner will arrange for adequate professional training to deal with those concerns.

15. **First Responder Communication Systems.** Project Owner agrees to cooperate with County Emergency Management to investigate complaints of radio system operations or quality problems in or near the Facilities. If the Facilities are shown to cause interference with normal operations of emergency service radio systems, Project Owner will cooperate with County Emergency Management to select a qualified contractor to identify specific interference remedies. County Emergency Management and Project Owner will cooperatively select a qualified contractor acceptable to both Parties to perform necessary interference remedial work. Project Owner will be responsible for all reasonable costs associated with complaint investigation and correction by outside parties.

16. **Attorneys'/Engineering Fees.** Project Owner shall reimburse the Local Governments a one-time payment for any and all reasonable attorneys' and engineering fees incurred in the preparation of this LOC not to exceed _____ dollars ($_____).

17. **Indemnification.** Project Owner agrees to defend, indemnify, and hold harmless the Local Governments and their supervisors, trustees, administrators, employees, and representatives (collectively the "Indemnified Parties") against any and all losses, damages, claims, expenses, including reasonable attorneys' fees, and liabilities for physical damage to the property of the Local Governments and for physical injury to any person, to the extent the same is a result of any activities or operations of Project Owner, its agents and employees, for the performance or non-performance of its duties pursuant to this LOC except to the extent caused by the negligence or intentional

misconduct of the Local Governments. Furthermore, Project Owner agrees to defend, indemnify, and hold harmless the Indemnified Parties from any third party claims arising out of terms and conditions of this LOC, except to the extent that such claims are caused by the negligence or intentional misconduct of the Local Governments. This indemnification obligation shall survive the termination of this LOC.

18. **Insurance.** Project Owner shall at all times during construction and operation of the Project carry Commercial General Liability insurance with a minimum liability of $5,000,000 per occurrence, and Automobile Liability insurance with a minimum liability limit of $1,000,000 per occurrence. Or, if the Project Owner is a qualified self-insured in the State of Wisconsin, shall maintain not less than $5,000,000 of claims-first-made excess general liability insurance on an occurrence basis over its self-insured retention that may change from time to time. Such excess insurance shall include automobile liability. Certificates of insurance will be provided to the Local Governments upon request.

19. **Security.** To guarantee compliance with the terms of this LOC, payment of costs incurred by the Local Governments in accordance with this LOC, or the remediation of any damage caused by Project Owner's failure to comply with the terms of this LOC, Project Owner shall furnish security initially in the form of a bond. The bond shall remain in an amount equal to $150,000, subject to allowable draws by the Local Governments.

    After issuance of the Certificate of Completion, the security shall be reduced to an amount equal to $50,000 in the form of a bond or other form of security determined by mutual agreement or shall remain as a bond if the Parties cannot agree, to complete any outstanding obligation of Project Owner under this LOC. The security shall remain in place throughout the term of this LOC to ensure compliance with Project Owner's warranty obligations.

20. **Compliance with Laws.** Project Owner shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments, and other valid orders of any government authority with respect to Project Owner's activities associated with the Project and shall obtain all permits, licenses, and orders required to conduct any and all such activities.

21. **Visual Considerations.** The Facilities and properties shall not be used for any type of advertising. The Project may erect and maintain a single project identification sign. The Project shall be minimally lighted so as not to disturb neighboring properties. Necessary lighting to provide safety and security of facilities shall be allowed. Project Owner will provide the Local Governments with a description of permanent Project lighting plans when available. Project Owner shall attempt to contact every owner of residential property immediately adjacent to solar arrays and discuss in good faith a reasonable, strategically-located visual buffer of plants that, upon mutual agreement, shall be installed at Project Owner's expense prior to the completion of construction of the Project.

20. **Decommissioning.** Project Owner shall implement the Decommissioning Plan attached as Exhibit E to this LOC upon permanent cessation of the commercial operation of the Project. For the purposes of this LOC, permanent cessation of the commercial operation of the Project shall mean that the entire Project has ceased commercial operation for a consecutive period of twelve (12) months for reasons other than a force majeure event. The Project shall be deemed to be in commercial operation if the Project is under active construction activities including, but not limited to, construction activities in connection with Project-wide replacements or upgrades.

The Parties acknowledge that the Decommissioning Plan shall be submitted to PSCW for its approval. To the extent the PSCW imposes additional requirements not included in the Decommissioning Plan, the Parties agree to substitute the attached Decommissioning Plan so as to incorporate the final decommissioning requirements. The Project will follow a substantially similar process to Badger Hollow (PSC Docket ID 9697-CE-100) by creating a detailed Decommissioning Cost Analysis and will provide such a plan to the Local Governments when the analysis is available. The Parties agree that the Decommissioning Plan shall require Project Owner to, at a minimum:

- Remove, at its expense, all Project components including, but not limited to, solar arrays and associated facilities to a depth of four (4) feet and properly dismantle all components;
- Restore the land to a condition reasonably similar to pre-existing conditions, which shall include the removal of gravel parking lots and storage yards, de-compacting areas where Project access roads were installed, and de-compacting any other areas of substantial soil compaction.
- At the latest, at the 15th anniversary of the commencement of operations, Project Owner will post commercially reasonable financial assurance in the amount of the reasonably estimated net costs of decommissioning the Project (net of the reasonably estimated salvage value of the Project improvements), as determined by a qualified engineer. The costs of this determination are to be paid by the Project Owner. The need for and amount of the financial assurance shall be reviewed by a qualified engineer, and, if applicable, updated every five (5) years following the 15th anniversary of the operations commencement date.

Upon Project Owner's completion of the decommissioning obligations, this LOC shall automatically terminate and be of no further force and effect, except as otherwise provided herein.

21. **Relevant Law.** Any and all disputes arising under this LOC and/or relating to the actual development and/or construction of the Project shall be resolved pursuant to the laws of the State of Wisconsin.

22. **Setbacks.** Project Owner agrees to install the solar arrays with a minimum setback of (i) sixty-five (65) feet from the edge of the right of way for public roads, (ii) fifty (50) feet from the property boundary lines of non-participating landowners, unless a smaller setback is permitted pursuant to an executed good neighbor agreement, in which case the setback shall be no less than twenty-five (25) feet, and (iii) one hundred (100) feet from any non-participating landowner dwelling unit. For adjourning participating landowners, the setback requirement may be established pursuant to mutual agreement between Project Owner and participating property owners.

23. **Soil Types.** Project Owner shall implement commercially reasonable efforts to ensure that at least 10% of solar structures are constructed on land that is not considered either Class 1 or Class 2 soils pursuant to the NRCS Soil Survey database (SSURGO).

24. **Phasing.** The Parties acknowledge that the construction of the Project may take place through one or more phases at Project Owner's election. In the event Project Owner elects to construct the Project in phases, the obligations of Project Owner hereunder will, to the extent applicable, relate only to the respective phase of the Project then being undertaken by Project Owner.

25. **Notices.** Notices, requests, demands, and other communications shall be sent to the following addresses:

If to Project Owner:
High Noon Solar Energy LLC
c/o INVENERGY LLC
Attn: Cooper Johnson
One South Wacker Drive, Suite 1800
Chicago, IL 60606
cjohnson@invenergy.com
630.217.2667

With a copy to:

General Counsel
Invenergy LLC
One South Wacker Drive.
Chicago, IL 60606
generalcounsel@invenergy.com

If to Columbia County:
[Placeholder]

If to Town of Leeds:
[Placeholder]

If to Town of Lowville:
[Placeholder]

If to Town of Arlington:
[Placeholder]

If to Town of Hampden:
[Placeholder]

All notices shall be in writing. Any notice shall be deemed to be sufficiently given (i) on the date, if delivered in person; (ii) five (5) days after being sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next Business Day if sent by overnight delivery service (*e.g.* Federal Express) to the notified Party at its address set forth above. These addresses shall remain in effect unless another address is substituted by written notice. Notices may be sent via email transmission the email addresses provided, however, notice sent via email shall be followed by notice delivered by personal service or by registered or certified mail, return receipt requested, or by overnight delivery.

[Intentionally left blank. Signature page to follow]

NOW, THEREFORE, the Parties have executed this agreement as of the date first written above.

COLUMBIA COUNTY:

BY: _____

NAME: _____

TITLE: _____

TOWN OF LEEDS:

BY: _____

NAME: _____

TITLE: _____

TOWN OF LOWVILLE:

BY: _____

NAME: _____

TITLE: _____

TOWN OF ARLINGTON:

BY: _____

NAME: _____

TITLE: _____

TOWN OF HAMPDEN:

BY: _____

NAME: _____

TITLE: _____

HIGH NOON SOLAR ENERGY LLC:

BY: _____

NAME: _____

TITLE: _____