



Little Crow

Solar Park

Little Crow Solar Park, Scunthorpe

DRAFT S106 AGREEMENT

DEADLINE 2

Revision:
APFP Reg:
PINS Reference:

Deadline 2
5(2)(q)
EN010101

Author:
Date:

Eversheds Sutherland LLP
May 2021

Dated:

2020

- (1) WILLIAM ROBERT STRAWSON
 - (2) THE RIGHT HONOURABLE KENNETH PETER LYLE FOURTH EARL OF INCHCAPE
AND SIR FRANCIS GEORGE WINDHAM BROOKE BARONET AS TRUSTEES OF
THE YARBOROUGH 1961 SETTLEMENT – GENERAL FUND
 - (3) INRG SOLAR (LITTLE CROW) LIMITED
 - (4) NORTH LINCOLNSHIRE COUNCIL
-

DEVELOPMENT CONSENT OBLIGATION

AGREED DRAFT 8 October 2020

made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) relating to Little Crow Solar Park, Scunthorpe, North Lincolnshire

BETWEEN:

- (1) **WILLIAM ROBERT STRAWSON** of Broughton Grange, Brigg DN20 0BJ ("**the First Owner**");
- (2) **THE RIGHT HONOURABLE KENNETH PETER LYLE FOURTH EARL OF INCHCAPE** and **SIR FRANCIS GEORGE WINDHAM BROOKE BARONET as Trustees of the YARBOROUGH 1961 SETTLEMENT – GENERAL FUND** and of Estate Office, Brocklesby Park, Grimsby DN31 8PN ("**the Second Owner**");
- (3) **INRG SOLAR (LITTLE CROW) LIMITED** (company registration number 11136483) whose registered office is at 93 Leigh Road, Eastleigh, Hants, England, SO50 9DQ ("**the Developer**"); and
- (4) **NORTH LINCOLNSHIRE COUNCIL** of Church Square House, Scunthorpe, North Lincolnshire DN15 6NL ("**the Council**").

BACKGROUND

- (A) The Developer submitted the Application to obtain authorisation for the Development in the form of the DCO and the Application was accepted by the Planning Inspectorate under section 55 of the 2008 Act on [date TBC].
- (B) The First Owner is the registered proprietor of that part of the Obligation Land with title absolute under Title Number HS394761 shown edged red on Plan 1.
- (C) The Second Owner is the registered proprietor of that part of the Obligation Land with title absolute under title Number HS364577 shown edged red on Plan 2.
- (D) The Developer has the benefit of an option with the First Owner and the Second Owner to acquire the Obligation Land and intends to construct and operate the Development as authorised by the DCO.
- (E) The Owners and the Developer have entered into this Agreement in order to ensure that the Development is regulated by the obligations contained herein which obligations are development consent obligations for the purposes of Section 106 of the 1990 Act.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 For the purposes of this Agreement (including for the avoidance of doubt the recitals above) the following expressions shall have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990 (as amended)
"2008 Act"	the Planning Act 2008 (as amended)
"Application"	the application made pursuant to section 37 of the 2008 Act for the DCO to authorise the Development
"Community Fund Contribution"	the sum of Two Hundred and Fifty Thousand Pounds (£250,000) to be applied by the Council to improving community facilities within the Parishes

"DCO"	the development consent order to be made under the 2008 Act pursuant to the Application
"Development"	the development authorised by the DCO
"First Export Date"	the date that the Development is connected to the electricity grid network and first exports electricity
"Implementation"	the implementation of the Development by the carrying out of any material operation within the meaning of Sections 56(2) and (4) of the 1990 Act provided that the carrying out of operations consisting of pre-construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, termination or diversion of existing services or temporary diversion of highways, temporary construction or works and operations to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this definition of this Agreement and "Implemented" shall be construed accordingly
"Index"	the United Kingdom fiscal annualised retail prices index as published by the Office for National Statistics (or by any government department or other body upon which duties to prepare such an index devolve) provided that in the event of the method used to compile such index or such index being abolished or for any reason whatsoever to apply such alternative as shall be agreed between the Owners, the Developer and the Council.
"Interest"	interest at three per cent above the base lending rate of the Bank of England
"Obligation Land"	the land shown edged red on Plan 1 and Plan 2
"Owners"	the First Owner and the Second Owner or each of them as the context requires
"Parishes"	the civil parishes of Appleby and Broughton
"Plan 1"	means the plan attached to this Agreement marked 'Plan 1'
"Plan 2"	means the plan attached to this Agreement marked 'Plan 2'.

1.2 This Agreement shall be interpreted in accordance with the following:

- 1.2.1 the headings appearing in this Agreement are for reference only and shall not affect the construction of this Agreement;
- 1.2.2 unless the context requires otherwise, reference in this Agreement to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs and schedules are references to those contained in this Agreement and references to plans and drawings are references to plans and drawings annexed to this Agreement;
- 1.2.3 "the words "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding the word" and the word "include" and its derivatives shall be construed accordingly;
- 1.2.4 references in this Agreement to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same;
- 1.2.5 in this Agreement the expressions "the Council" shall include its respective statutory successors in respect of the functions to which this Agreement relates and the expressions "the Owners" and "the Developer" shall include their successors in title to the Obligation Land;
- 1.2.6 any obligations of the parties to this Agreement contained in this Agreement which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires;
- 1.2.7 any obligations by the Owner and/or the Developer not to do any act or thing shall include an obligation to use reasonable endeavours not to permit or allow the doing of that act or thing to be done by another person and any obligation by the Owner and/or the Developer to do an act or thing shall include an obligation to procure the act or thing is done;
- 1.2.8 if any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.9 the Interpretation Act 1978 shall apply to this Agreement.

2. **STATUTORY POWERS, ENFORCEMENT AND LIABILITY**

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act as amended by Section 174 of the 2008 Act and the obligations in this Agreement constitute development consent obligations for the purposes of the Section 106 of the 1990 Act and are planning obligations pursuant to Section 106(3) of the 1990 Act enforceable by the Council.
- 2.2 The Owners enter into this Agreement with the effect of binding the Obligation Land and the Developer enters into this Agreement to bind any interest resulting from the agreement entered into with the Owners referred to in **recital (D)** however the Developer shall not be bound by the obligations herein unless and until it acquires a legal interest in the Obligation Land being more than an option or conditional contract.

3. **COMMENCEMENT**

The obligations contained in **clauses 6 and 7** and **the Schedules** to this Agreement shall not take effect unless and until both:

- 3.1 the DCO has come into force; and
- 3.2 the Development has been Implemented.

4. **FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENTS**

Nothing in this Agreement prohibits, limits or affects in any way the right to develop any part of the Obligation Land in accordance with a planning permission issued pursuant to the 1990 Act or a development consent order or any other statutory authority other than the DCO as defined herein granted or issued (whether or not on appeal or by any other means) either before or after the date of this Agreement.

5. **TERMINATION OF THIS AGREEMENT**

This Agreement shall cease and determine if the DCO is quashed, cancelled, revoked or expires prior to Implementation except to the extent that any obligation in this Agreement has been performed in whole or in part.

6. **COVENANTS BY THE OWNERS**

6.1 The Owners covenant with the Council that they shall carry out and comply with the development consent obligations contained in **Schedule 1**.

7. **COVENANTS BY THE COUNCIL**

7.1 The Council covenants with the Owners and Developer as set out in **Schedule 2**.

8. **SUCCESSORS IN TITLE**

8.1 This Agreement shall be enforceable against the Developer (subject to **clause 2.2**) and the Owners and their successors in title and those deriving title under them in respect of the Obligation Land.

8.2 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Obligation Land or the part of the Obligation Land in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date.

9. **THIRD PARTIES**

10. Nothing contained in this Agreement shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council, and to the specific persons executing this Agreement as the Owner and its successors (if any) as defined in this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights or enforcement in respect of any matter contained in this Agreement.

11. **SERVICE OF NOTICES**

11.1 All notices, requests, demands or other written communications to be sent or given pursuant to the provisions of this Agreement shall be deemed to have been properly given or made if despatched by first class letter to the party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows:

11.1.1 if to the Council to the address set out above or any other address notified to the Owners and the Developer and marked for the attention of: Monitoring Officer, Church Square House, Scunthorpe, North Lincolnshire DN15 6NL or or any other address notified to the Owners and to the Developer;

11.1.2 if to the Owners to the addresses set out above or any other address notified to the Council and to the Developer;

11.1.3 if to the Developer to the address set out above or any other address notified to the Council and to the Owners.

12. **LOCAL LAND CHARGE**

This Agreement shall be registered as a local land charge.

13. **INTEREST**

If any payment due under this Agreement is due but remains unpaid for a period exceeding twenty eight days the payer shall pay on demand to the payee Interest from the date payment is due to the date of payment.

14. **WAIVER**

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owner.

15. **VOID PROVISIONS**

If any individual clause or paragraph in this Agreement is subsequently held to be unenforceable by a court the offending clause or paragraph shall cease to be binding and will be severed from the Agreement and the severing of such clause or paragraph shall not affect the continuing enforceability of the remainder of the Agreement.

16. **NO FETTER OF DISCRETION**

Nothing herein contained or implied shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes, bye-laws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.

17. **GENERAL REQUIREMENT TO CO-OPERATE**

The parties hereto shall act in good faith and shall each cooperate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescale specified.

18. **DISPUTE RESOLUTION**

18.1 Subject to **clause 18.7**, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this **clause 18**. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

18.2 For the purposes of this **clause 18** a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' relevant professional experience.

18.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under **clause 18.4**.

18.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

18.5 The Specialist is to act as an independent expert and:

- 18.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;
 - 18.5.2 each party is to have a further ten working days to make written comments on the other's representations and will copy the written comments to the other party;
 - 18.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 18.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 18.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 18.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 18.6 Responsibility for the costs of referring a dispute to a Specialist under this **clause 18**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 18.7 This **clause 18** does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

19. **JURISDICTION**

This Agreement shall be governed by and interpreted in accordance with the law of England and Wales.

20. **INDEXATION**

The Community Fund Contribution shall be increased or decreased by reference to the Index calculated from the date of this Agreement to the date of payment or the date on which the Community Fund Contribution is due (whichever is the earlier).

21. **NOTIFICATION OF TRIGGERS**

- 21.1 The Owners or the Developer shall notify the Council of the following events within 28 days of their occurrence:
 - 21.1.1 Implementation of the Development; and
 - 21.1.2 the First Export Date.

SCHEDULE 1

OWNERS' COVENANTS

1. PAYMENT OF THE COMMUNITY FUND CONTRIBUTION

- 1.1 Unless otherwise agreed with the Council in writing, the Owners covenant to pay the Community Fund Contribution to the Council within 28 days of the First Export Date.

DRAFT

SCHEDULE 2

COUNCIL COVENANTS

1. COMMUNITY FUND CONTRIBUTION

The Council covenants with the Owners and the Developer:

- 1.1 to use the Community Fund Contribution for the purposes of improving community facilities within the Parishes only and for no other purpose;
- 1.2 to repay to the party who paid the Community Fund Contribution together with simple interest at the base rate available from time to time of the Bank of England any monies that have not been spent or irrevocably committed upon the expiry of ten (10) years from the date of payment of the Community Fund Contribution and to be repaid within 28 days of the expiry of that ten (10) year period; and
- 1.3 to provide the Owners and the Developer upon written request with the details of expenditure of the Community Fund Contribution.

DRAFT

IN WITNESS of which this Agreement has been executed as a Deed the day and year first before written

EXECUTED AS A DEED by)
WILLIAM ROBERT STRAWSON)
in the presence of:)

Signature

Witness Signature:

Witness Name:

Witness Address:

Executed as a deed by)
THE RIGHT HONOURABLE)
KENNETH PETER LYLE FOURTH)
EARL OF INCHCAPE)
in the presence of:)

Signature

Witness Signature:

Witness Name:

Witness Address:

Executed as a deed by)
SIR FRANCIS GEORGE)
WINDHAM BROOKE BARONET)
in the presence of:)

Signature

Witness Signature:

Witness Name:

Witness Address:

Executed as a deed by)
INRG SOLAR)
(LITTLE CROW) LIMITED)
acting by one director)
in the presence of:)

Signature of director

Witness Signature:

Witness Name:

Witness Address:

THE COMMON SEAL of)
NORTH LINCOLNSHIRE COUNCIL)
was affixed in the presence of:)

Authorised Signatory



