

MEMORANDUM OF UNDERSTANDING REGARDING A REQUEST FOR IMPACT ASSISTANCE FUNDS FROM THE STATE OF WYOMING, INDUSTRIAL SITING COUNCIL: SOUTH CHEYENNE SOLAR PROJECT, LARAMIE COUNTY, AND THE CITY OF CHEYENNE, WYOMING

This Memorandum of Understanding about Impact Assistance Funds for the South Cheyenne Solar LLC Project (“MOU”) is dated and effective the date of the last signature appended hereto by the parties any party, or as otherwise allowed by law or regulations, between the following entities who, when referred to collectively, are referred to as “The Parties” or “Parties”:

- The Board of Commissioners of the County of Laramie, Wyoming, a body corporate and political subdivision of the State of Wyoming (“The Board”), whose address is 310 West 19th Street, Cheyenne, Wyoming 82001; hereinafter referred to as “Laramie County”), whose address is P.O. Box 608; Cheyenne, Wyoming; 82003; and
- The City of Cheyenne, Wyoming, a Wyoming municipal corporation under Wyo. Stat. § 15-1-102 and a first class city under Wyo. Stat. § 15-3-101 (“City of Cheyenne”), whose address is 2101 O’Neil Avenue; Cheyenne, Wyoming; 82001; and
- All other parties to this MOU shall be as indicated in attached counterpart signature pages and as identified by name and contact information on Attachment ‘A’ to this MOU which is fully incorporated herein

RECITALS/FINDINGS

- A. **WHEREAS**, South Cheyenne Solar LLC (“SCS”) intends to develop a solar energy facility and associated infrastructure in unincorporated Laramie County. The project is planned to be up to 150 Megawatts size, consisting of photovoltaic solar panel arrays, one substation and 2.58 mile 115 kV interconnected transmission line to the new Black Hills Sweet Grass substation.
- B. **WHEREAS**, SCS is a wholly-owned subsidiary of Hanwha Q Cells USA Corp. recorded in Irvine California. SCS is responsible for permitting, development, construction, and operation of the 150 MW project
- C. **WHEREAS** . The project will include engineering, purchase, and construction of all equipment and facilities necessary for a fully operational solar energy electrical generation project.
- D. **WHEREAS**, SCS has submitted a section 109 permit application pursuant to Wyoming statute 35-12-109 of the industrial development information and siting act, in conjunction with this project. The Project meets the definition of a “facility” in W.S. § 35-12-109, so W.S. § 35-12-106 requires SCS to obtain a permit to construct the facility.

- E. **WHEREAS**, The Project is to be located in the unincorporated Laramie County on private and State land leases. The land subject to the Project has been used primarily for livestock grazing and limited infrastructure. The Project site lies within the regulatory area of Laramie County but is not within a designated zoned district. Grasslands are present over 99% of the land cover, and reflect the primary land uses within the project boundaries.
- F. **WHEREAS**, SCS has actively sought out potentially affected entities, including Laramie County, State agencies and other stakeholders to discuss potential environmental, social and economic issues and identify mitigation recommendations and solutions that could be incorporated into the planning and design of the project. SCS conducted an open house on August 10, 2020 in Cheyenne. SCS has notified all appropriate local governments of the project and invited their involvement. Information letters in regard to the project, have been sent to 23 State agencies, 39 local governments and Joint Powers Boards, one participating landowner, 93 adjacent landowners, and 13 mineral owners. SCS is also met with Laramie County officials and Laramie County Planning and Development staff to discuss their specific issues and the need for compliance with applicable local regulation and potential mitigation.
- G. **WHEREAS**, the Project is expected to provide economic benefits, including temporary and permanent job creation and expansion of renewable energy generation within the region. It will also effect potential allocation and distribution of impact assistance fund payments, local spending in goods and services, additional local economic activity, new land lease revenues to landowners and significant tax revenues.
- H. **WHEREAS**, October, 2022, SCS submitted a Permit Application in the form required by W.S. § 35-12-109 for the Project (“Application”) to the Wyoming Department of Environment Quality (“DEQ”), Industrial Siting Council.
- I. **WHEREAS**, W.S. § 35-12-109(xiii) requires SCS to provide in its Application “[a]n evaluation of potential impacts together with any plans and proposals for alleviating social and economic impacts upon local governments or special districts and alleviating environmental impacts which may result from the proposed facility.”
- J. **WHEREAS**, W.S. § 35-12-109(xx) & (xxi) requires SCS, for this Project, to provide in its Application any “ site reclamation and decommissioning plan which will assure that [it] will be properly reclaimed and decommissioned,” along with proof of SCS’s “financial capability to decommission and reclaim the facility” and “financial capability to construct, maintain and operate the facility.”
- K. **WHEREAS**, Wyoming’s Chapter 1, Section 2(b), DEQ, Administrative Rules and Regulations (“Rules and Regulations”) define “area or local government primarily affected by the proposed industrial facility” as “any defined geographical area in which the construction or operation of the industrial facility may significantly affect the environment, population, level of economic well-being, level of social services, or may threaten the health, safety or welfare of present or expected inhabitants” and the definition includes

“any such county, incorporated municipality, school district, or combination thereof formed under Wyoming Joint Powers Act.”

- L. **WHEREAS** Chapter 1, Section 8(g), the Rules and Regulations require SCS to “identify what it deems to be the area of site influence and recommends as the local governments primarily affected by the proposed industrial facility”
- M. **WHEREAS** Chapter 1, Section 8(i)(VII)(D), the Rules and Regulations require SCS to provide “[e]stimates of impact assistance payments which will result from the project” in the Application.
- N. **WHEREAS**, the Application disclosed that the areas or local governments primarily affected by the proposed Project includes the Parties to this submission.
- O. **WHEREAS**, the Parties are the areas or local governments that will be primarily affected by the Project as described in the Application.
- P. **WHEREAS**, Wyoming industrial development information and siting rules and regulations define the phrase “area or local government primarily affected by the proposed industrial facility” as “any defined geographical area in which the construction or operation of the industrial facility may significantly affect the environment, population, level of economic well-being, level of social services, or may threaten the health, safety or welfare of present or expected inhabitants” and the definition includes “any such county, incorporated municipality, school district, or combination thereof formed under Wyoming Joint Powers Act,” Chapter 1, Section 2(b), Wyoming Department of Environmental Quality, Administrative Rules and Regulations.
- Q. **WHEREAS**, this MOU will include estimates of impact assistance payments that will result from the Project.
- R. **WHEREAS**, the Parties desire to enter an agreement to determine and request the amounts and schedule for payment distribution of impact assistance funds for the Project consistent with the Application.

Now, therefore, in consideration of the Recitals and Findings, the terms and conditions hereinafter contained, and for such other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Parties agree as follows:

- a. **Term.** This MOU shall be in full force and effect for the period commencing upon the affixing of the last signature of a party hereunto or until the Industrial Siting Council accepts this MOU and its associated requests for funding as final and shall be in effect until the Project is completed.

2. Purpose.

The purpose of this MOU is to provide the Industrial Siting Council pursuant to W.S. § 39-15-111(c) and (d) and W.S. § 39-16-111 (d) and (e) an amount and schedule for distribution of impact assistance funds as agreed by the Parties.

3. Amount & Schedule for Distribution of Impact Assistance Funds.

3.01. The Parties agree to the amount and schedule for distribution of impact assistance funds as outlined in Exhibit 'A' which is attached hereto and incorporated herein. The Parties' funding requests contemplate that the Project is likely to occur during the same period as other permitted Industrial Projects; therefore, any Parties already receiving impact assistance funding for other projects adjusted their requests for the Project accordingly to prevent duplication. Documentation providing support and/or elucidation of the request and schedule for distributive impact assistance funds will be attached hereto as Exhibit 'B' which is fully incorporated herein.

3.02. Should a Party request that a distribution be adjusted, revised or modified, the Party shall first seek approval of all Parties before submittal to the Industrial Siting Council for their request for any modification of amount or distribution of impact assistance funds. The Parties shall take into consideration the factors as outlined in the Industrial Siting Rules as to whether the social and economic impacts have changed and establish a new distribution if necessary. The Parties may enter into an MOU with another Party to adjust, revise or modify a Party's amount of distribution of impact assistance funds; however, such MOU shall be forwarded to the Industrial Siting Council for review and approval.

4. General Provisions.

4.1. Amendments. Any Party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the Parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all Parties to this MOU.

4.2. Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have subject matter jurisdiction over any action arising out of this MOU and personal jurisdiction over the Parties, and the venue shall be the 1st Judicial District, State of Wyoming District Court in Laramie County, Wyoming.

4.3. Entirety of MOU. This MOU, consisting of five (5) pages and any associated parties counterpart signature pages, and; (Exhibit 'A'), Amounts and Distribution schedule, for Laramie County, of impact assistance funds, (Exhibits 1 and 2: Also attached to Laramie County's Pre-Hearing Statement) and any additional Exhibits from the City of Cheyenne, offered in support of their request, as attached to City's Counterpart to this MOU, represent the entire and integrated MOU between the Parties and when accepted as final by the Industrial Siting Council supersedes all prior negotiations, representations, agreements, and MOUs, whether written or oral.

4.4. Severability. Should any term of this MOU be judicially determined to be illegal, unenforceable, void, or voidable, the remainder of the MOU shall continue in full force and effect, and any Party may renegotiate the term affected by the severance.

4.5. Governmental Immunity. The Parties and their respective governing bodies do not waive any defenses available under law, including, but not limited to, if applicable, their governmental immunity, by entering into this MOU, and each fully retains all immunities and defenses available under W.S. § 1-39-104(a) and all other immunities provided by law with respect to any action based on or occurring as a result of this MOU.

4.6. Indemnification. Each Party to this MOU shall assume the risk of liability arising from its own conduct. No Party agrees to insure, defend or indemnify the other Parties.

4.7. Other Interagency MOUs. All Parties to this MOU acknowledge that this MOU does not preclude or preempt each of the Parties individually entering into an MOU with one or more Parties to this MOU or outside of this MOU to modify the amount and distribution schedule of impact assistance funds as outlined in 3.02 herein. Such MOU's shall not nullify the force and effect of this MOU.

4.8. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this MOU.

4.9. Waiver. The waiver or any breach of any term or condition in this MOU shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

4.10. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

4.11. Time is of the Essence. Time is of the essence in all provisions of the MOU.

4.12. Counterpart Signatures. This MOU may be executed in counterparts, each of which when so executed and delivered shall constitute a complete and original instrument but all of which taken together shall constitute one and the same MOU and agreement, and it shall not be necessary when making proof of this MOU and agreement or any counterpart thereof to account for any other counterpart. Signatures transmitted by facsimile or e-mail, to stand or electronically transmitted files, shall have the same effect as the delivery original signatures and shall be binding upon and enforceable against the parties hereto as if such facsimile or stand document or electronically transmitted document were an original executed counterpart. If the parties exchange signatures by facsimile or electronic means, the parties agree to exchange original signatures as soon thereafter as is reasonably practical.

SIGNATURE PAGE

**BOARD OF COMMISSIONERS OF THE COUNTY OF
LARAMIE, WYOMING:**

By: Chairman

Date: _____

ATTEST:

By: _____
Debra Lee, Laramie County Clerk

CITY OF CHEYENNE

Patrick Collins, Mayor

Date: _____

(SEAL)
Attest:

City Clerk

EXHIBIT 'A' & 'B'

**MEMORANDUM OF UNDERSTANDING REGARDING A REQUEST FOR IMPACT
ASSISTANCE FUNDS FROM THE STATE OF WYOMING, INDUSTRIAL SITING
COUNCIL: SOUTH CHEYENNE SOLAR PROJECT, LARAMIE COUNTY,
WYOMING**

Amounts:

Laramie County: \$ 405,228.00

City of Cheyenne: \$ 86,681.20

Distribution Schedule, Laramie County:

Laramie County: One-half determined amount, on or before February 28, 2023 and One-half determined amount on or before July 31, 2023

EXHIBIT 1

Laramie County Fiscal Year 2023 Budget

	Fund	Budget
101	General Fund	104,665,338
203	Optional 1% Sales Tax Fund	13,395,885
205	Abandon Vehicles Fund	128,000
207	Misc. Grants Fund	1,236,376
208	Economic Development Fund	66,727
209	911 Fund	3,416,933
210	COVID Fiscal Recovery Fund	17,903,981
211	Drug Case Forfeitures Fund	102,000
212	Public Works Fund	22,584,185
221	Homeland Security Fund	167,199
222	Emergency Management Fund	369,448
223	Shooting Sports Center Fund	470,932
224	Sheriff Misc. Grants Fund	120,849
225	Events Department Fund	2,104,723
227	State Lottery Fund	625,000
230	GIS COOP Fund	164,858
231	Jail Commissary Fund	1,415,000
232	County Improvements Fund	2,700,000
234	Special Courts Fund	557,704
235	Planning-Development Fund	4,570,000
238	County Roads Fund	5,014,720
242	Business Ready Grants Fund	2,250,000
243	SPOT O&M Fund	6,703,000
306	SPOT 2017 Projects Fund	3,952,536
310	SPOT 2021 Projects Fund	29,888,574
Total County Budget		\$ 224,573,968
County Population		100,863
Budget Per Capita		\$ 2,227
Multiply by		182
Impact		<u>\$ 405,228</u>



EXHIBIT 2

LARAMIE COUNTY PLANNING & DEVELOPMENT DEPARTMENT

Planning • Building

MEMORANDUM

TO: Wyoming Industrial Siting Council

FROM: Justin Arnold, Program Manager, Planning and Development

DATE: December 5, 2022

TITLE: Regulatory Requirements for Large Solar Projects and High Power Transmission Lines

To whom it may concern,

I am writing with regard to the planning and building regulatory requirements that will be necessary to accommodate the proposed South Cheyenne Energy Project. Please be advised that Laramie County Planning and Development will require the following action items and permit applications:

- The proposed site area lies within the Land Use (LU) Zoning District which requires public notice, public hearing and approval by the Board of County Commissioners for installation of large scale wind and solar projects.
- The installation of a highpower transmission line requires that a public hearing be held without any action taken by the Board of County Commissioners in order for the general public to voice their concerns about potential negative impacts of the project to be heard by the applicant. This action also requires that all property owners of record of land adjacent to and within 1,500 feet of the proposed location of the transmission line shall be notified of the hearing by the applicant via regular mail.
- The applicant shall submit a Standard Grading, Erosion and Sediment Control permit to facilitate the Storm Water Pollution Prevention Plan and site revegetation.
- Commercial Building Permits will be necessary for construction of infrastructure.
- A site plan, which may require approval by the Board of County Commissioners at their discretion, shall be submitted for agency input and receive a Certificate of Review prior to issuance of the referenced permits that are required for the project. Once all permits have received final inspections ensuring installations were completed in accordance with the approved submittals, a Certificate of Compliance shall be issued allowing for operations to commence.

According to the Information and Siting Act (ISA) application submitted in October of 2022, the applicant indicated that pertinent applications would be submitted to Laramie County in the same month. To date, Laramie County has yet to receive the above referenced applications for review. It is the request of this jurisdiction that submittal and approval of these items be included as conditions of approval for the industrial siting application.

Should you have any questions in this matter, please feel free to contact Laramie County Planning and Development.

Regards,

Justin Arnold
Program Manager, Planning and Development