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Founded 1909

June 30, 2021

Ms. Tanowa M. Troupe, Secretary
Public Utilities Commission of Ohio
180 E. Broad Street, 11th Floor
Columbus, OH 43215

Re: OPSB Case No. 18-1334-EL-BGN
Hecate Energy Highland LLC
Condition Compliance Update

Dear Ms. Troupe:

On May 16, 2019, Hecate Energy Highland LLC (“Highland Solar”) was issued a certificate of environmental compatibility and public need (“Certificate”) by the Ohio Power Siting Board (“Board”) to construct a 300 MW solar-powered electric generation facility in Highland County, Ohio. Highland Solar, through this correspondence, is providing information on condition compliance under the Certificate.

Condition 28 (transportation management plan and road use agreement): An executed copy of the Roadway Use, Repair and Maintenance Agreement is being provided pursuant to this condition.

Please do not hesitate to call me if there are any questions on this submittal.

Very truly yours,

/s/ Michael J. Settineri

Michael J. Settineri

Enclosure

6/30/2021 39503609 V.2

ROADWAY USE, REPAIR AND MAINTENANCE AGREEMENT

THIS ROADWAY USE, REPAIR AND MAINTENANCE AGREEMENT (“**AGREEMENT**”), is made and entered into this 16th day of June, 2021, by and between **CLAY TOWNSHIP, WHITEOAK TOWNSHIP** (collectively “**TOWNSHIPS**” but individually as “**TOWNSHIP**”), **HIGHLAND COUNTY ENGINEER** (“**COUNTY ENGINEER**”), **HIGHLAND COUNTY COMMISSIONERS** (“**COUNTY**”), and **HECATE ENERGY HIGHLAND LLC** (“**HECATE**”) whose address for purposes of this **AGREEMENT** is 621 W. Randolph Street, Suite 200, Chicago, IL 60661 (hereinafter referred to individually as a “**PARTY**” or collectively, as the “**PARTIES**”).

RECITALS

Whereas, **HECATE** plans to construct, operate and maintain a 300 megawatt (MW) solar-powered electric generating facility to be located on 2,700 acres in Highland County (“**HIGHLAND SOLAR FARM**”). **HECATE** has been issued a certificate of environmental compatibility and public need from the Ohio Power Siting Board to do so. This **AGREEMENT** is limited to the **HIGHLAND SOLAR FARM**.

Whereas, **HECATE** is also seeking qualification of the **HIGHLAND SOLAR FARM** for the exemption from taxation of tangible personal property and real property under R.C. 5727.75.

Whereas, R.C. 5727.75(F)(4) requires that **HECATE** repair all roads, bridges, and culverts affected by construction as reasonably required to restore them to their preconstruction condition, as determined by the **COUNTY ENGINEER** in consultation with the local jurisdiction responsible for the roads, bridges, and culverts; in the event that the **COUNTY ENGINEER** deems any road, bridge, or culvert to be inadequate to support the construction or decommissioning of the energy facility, the road, bridge, or culvert shall be rebuilt or reinforced to the specifications established by the **COUNTY ENGINEER** prior to the construction or decommissioning of the facility.

Whereas, R.C. 5727.75(F)(4) also requires that **HECATE** shall post a bond in an amount established by the **COUNTY ENGINEER** and to be held by the board of county commissioners to ensure funding for repairs of roads, bridges, and culverts affected during the construction.

Whereas, the **PARTIES** desire to address **HECATE**’s obligations under the Ohio Revised Code as well as certain issues relating to the use by **HECATE** and **HECATE**’s suppliers and contractors, their respective subcontractors and its and their respective employees, agents and other representatives (“**REPRESENTATIVES**”) in connection with the construction of the **HIGHLAND SOLAR FARM** and use of any roads, bridges, and culverts owned, operated and maintained by the **COUNTY** or the **TOWNSHIPS** within Highland County.

The roads and the portion of those roads to be used for the **HIGHLAND SOLAR PROJECT** that are the subject of this **AGREEMENT** are identified in Exhibit A to this **AGREEMENT** and are the same portions of those roads identified in the Transportation Effect and Route Evaluation Study (“**ROAD STUDY**”) attached as Exhibit B prepared by Fisher and Associates, on behalf of **HECATE**, as a part of **HECATE**’s application for a certificate of environmental compatibility and public need for the **HIGHLAND SOLAR FARM**, as well as the update of that **ROAD STUDY** (“**DESIGNATED ROADS**”).

Whereas, in connection with the development, construction, operation, or maintenance of the **HIGHLAND SOLAR FARM**, it may be necessary for **HECATE** and its **REPRESENTATIVES** to:

- 1.) transport heavy and/or oversized equipment and materials over designated haul routes on roads located in the **TOWNSHIPS** and **COUNTY**, which may in certain cases be in excess of the design limits of such roads;
- 2.) transport certain locally sourced materials, such as water and gravel etc., on such roads;
- 3.) widen such roads and make certain permanent modifications and improvements to such roads (including to certain culverts, bridges, road shoulders, crest corrections, and other related fixtures) to permit such equipment and materials to pass; and
- 4.) Encroach within the **TOWNSHIPS'** and **COUNTY'S** established and recorded maintenance rights-of-way.

Whereas, the **TOWNSHIPS** and the **COUNTY** have exclusive authority and control over the county roads and township roads and agree to permit the above activities on the terms and conditions set forth herein and hereby acknowledge and agree that the **COUNTY ENGINEER** shall act on behalf of both the **TOWNSHIPS** and the **COUNTY** with respect to implementation of the terms and conditions of this **AGREEMENT**.

1. ROADWAYS

1.1 PRIOR CONDITIONS OF ROADS

1.1.1. Prior to the start of construction, **HECATE**, at its own expense, will conduct a detailed video record of road integrity along the **DESIGNATED ROADS** to confirm whether conditions have changed since the **ROAD STUDY** was conducted. **HECATE** will create a detailed video record of the pre-existing condition of such **DESIGNATED ROADS**. **HECATE** will update the **ROAD STUDY**, as needed, and deliver the **ROAD STUDY** and video record to the **COUNTY ENGINEER**. To the extent to which any **DESIGNATED ROAD** is inadequate to support the construction of the **HIGHLAND SOLAR FARM**, **HECATE** shall include, in the updated **ROAD STUDY**, any recommendations regarding the rebuilding or reinforcement of such **DESIGNATED ROAD**. The **COUNTY ENGINEER** shall review the updated **ROAD STUDY** and detailed video record and, as promptly as possible and in no event later than thirty (30) days of receipt, provide his approval or approval with modifications of any recommendations, which approval shall not be unreasonably withheld, conditioned, or delayed.

1.2 PRE-CONSTRUCTION PROJECT ROAD IMPROVEMENTS

1.2.1. If, as a result of the updated **ROAD STUDY**, **HECATE** and the **COUNTY ENGINEER** have determined that improvements need to be made prior to the use of all or a portion of **DESIGNATED ROADS**, **HECATE** shall make or cause such improvements to be made. **HECATE** shall not commence any improvement to such **DESIGNATED ROADS** or use such **DESIGNATED ROADS** for operation of a motor vehicle or other equipment otherwise requiring an overweight/oversized permit until such approval or approval with modifications of any recommendations from the **COUNTY ENGINEER** is received. The **TOWNSHIPS** and **COUNTY** hereby acknowledge and agree and consent to **HECATE'S** completion of such modifications and permanent improvements to such **DESIGNATED ROADS** as approved by the **COUNTY ENGINEER**. Such modifications and permanent improvements may include the widening of certain roads, the strengthening and/or spanning to existing culverts and bridges, and

other improvements and modifications reasonably necessary to accommodate the heavy equipment and materials to be transported on the **DESIGNATED ROADS**.

1.2.2. **HECATE** agrees that any modifications and improvements to **DESIGNATED ROADS**, including any temporary turning radius, corner or intersection widening, intersections or corner improvements shall comply with all applicable engineering standards and stamped engineering drawings that are submitted by **HECATE** to the **COUNTY ENGINEER** prior to the commencement of the modifications and improvements. The **COUNTY ENGINEER** agrees to provide a review of all submitted documents as promptly as possible but in no event later than thirty (30) days of receipt.

1.3 STATE OF OHIO – PREVAILING WAGE LAW

HECATE, or any representative hired by **HECATE**, will pay prevailing wages, as applicable, for road improvements, modifications, and repairs as set forth in R.C. 4115.03 through.16 when the total overall project cost to **HECATE** is fairly estimated to be more than the amount prescribed in R.C. 4115.03 (B)(4).

1.4 USE OF DESIGNATED ROADS BY HECATE

1.4.1 In connection with the development, construction, operation and maintenance of the **HIGHLAND SOLAR FARM**, the **COUNTY ENGINEER** hereby acknowledges and agrees that **HECATE** may use the **DESIGNATED ROADS** at any time, seven days a week, 365 days a year, beginning June 20, 2021 and for the duration of the development, construction, operation, and maintenance of the **HIGHLAND SOLAR FARM**. However, **HECATE** agrees that it will endeavor, to the extent practical, to use **DESIGNATED ROADS** in a manner and at times that will minimize the impact to and inconvenience to the traveling public. Such use may include the movement and transportation of overweight and oversized vehicles, equipment, water, loads and other necessary equipment and materials to and from the **HIGHLAND SOLAR FARM**. If **HECATE** desires to use a portion of other roads for construction not already designated, **HECATE** shall submit a further update to its **ROAD STUDY** to the **COUNTY ENGINEER** that shall include such additional roads to be included as **DESIGNATED ROADS** for approval by the **COUNTY ENGINEER**. To the extent appropriate, the detailed video record shall be supplemented before use of the newly added sections of roads begins. Said sections of roads will be improved under Section 1.2, if necessary.

1.4.2. **HECATE** is required to request an overweight/oversized vehicle from the **COUNTY ENGINEER** if applicable, unless such travel will be on a **DESIGNATED ROAD** in which case this **AGREEMENT** shall provide the necessary authorization to **HECATE** and its **REPRESENTATIVES** for such transport.

1.5 THAW LOAD REDUCTION SECTION

1.5.1. Once the above described work is completed and accepted, the **TOWNSHIPS** and **COUNTY** agrees to waive the frost law requirements in regards to requiring overload permits and limited travel on the **DESIGNATED ROADS** during the late winter and early spring.

1.6 DAMAGES AND REPAIRS

1.6.1. In the event that any **DESIGNATED ROAD** or related appurtenances, including bridges, culverts, signage, or other road fixtures, or any **TOWNSHIP** and **COUNTY** owned drainage tile or open ditch, is damaged by **HECATE** or its **REPRESENTATIVES**, **HECATE** shall repair (or caused to be repaired) such damage as reasonably required to return the **DESIGNATED ROAD** or related appurtenance to the condition existing immediately prior to such damage occurring and subject to standards reasonably agreed to by the **COUNTY ENGINEER** and **HECATE** (which shall be based upon Ohio Department of Transportation's Construction and Material specifications latest edition) and the **COUNTY'S** specifications ("Applicable Specifications"). Subject to considerations of safety, the presence of emergency conditions, and the costs of such repairs, any repair and restoration shall commence and be completed promptly by **HECATE**. Following completion of such repair, the **COUNTY ENGINEER** and **HECATE** shall jointly inspect the repair to confirm that it has been completed in accordance with Applicable Specifications. Damages to any **TOWNSHIP** and **COUNTY** owned drainage or open ditch may also include damages occurring within the **TOWNSHIP** and **COUNTY** maintenance right-of-way, if such damages deny, impede, or affect the **TOWNSHIP** or **COUNTY'S** ability to exercise drain maintenance within its right-of-way and results in additional costs to the **TOWNSHIP** and **COUNTY**. The **COUNTY ENGINEER, TOWNSHIPS AND COUNTY** acknowledge and agree that **HECATE** is not responsible for any damage to **DESIGNATED ROADS** not caused by **HECATE** or its Representatives.

1.7 EXCESSIVE DAMAGES

1.7.1. If during the **HIGHLAND SOLAR FARM** site construction, road damage becomes excessive in nature as to any portion of the **DESIGNATED ROADS**, **HECATE** will make additional improvements to strengthen the road base and surface immediately upon written notice from the **COUNTY ENGINEER**. All use of such portions of the **DESIGNATED ROADS** will cease until repairs are done to correct the problem. Excessive damages are defined as those damages that are not yet an emergency damage but could become a hazard or cause a safety issue to the travelling public if left in their current state.

1.8 EMERGENCY REPAIRS

1.8.1. If during the **HIGHLAND SOLAR FARM** site construction, **HECATE** or its **REPRESENTATIVES** are reasonably believed by the **COUNTY ENGINEER** to have caused damage to any road(s) of a magnitude sufficiently great to create a hazard to the travelling public, which in the good faith opinion of the **COUNTY ENGINEER** warrants an immediate repair or road closing, the **COUNTY ENGINEER** shall notify **HECATE**, in writing, of the damage. If **HECATE** fails to begin such repair work within twenty-four (24) hours of the receipt of written notice (as evidenced by tracking or written acknowledgement of receipt) from the **COUNTY ENGINEER**, the **COUNTY ENGINEER** may unilaterally make or authorize repair to the road(s) and the costs incurred by the **COUNTY** may be paid by **HECATE** or drawn against the Performance Assurance Bond, subject to the conditions set forth in Section 2.7 as set forth below. The **COUNTY ENGINEER** shall photograph or videotape and otherwise document the conditions and make all such documentation available to **HECATE**.

1.9 COMPLETION OF PROJECT

1.9.1. After completion of the construction of the **HIGHLAND SOLAR FARM**, and upon written notice from **HECATE** that the **HIGHLAND SOLAR FARM** is complete, the **COUNTY ENGINEER** will inspect the **DESIGNATED ROADS** for road damage caused by **HECATE** during the **HIGHLAND SOLAR FARM** construction period including damage to road base, culverts, bridges, ditches, guardrails, signs or other road appurtenances. The **COUNTY ENGINEER** will provide a written list of damages to **HECATE**. **HECATE** shall make or cause to be made the necessary repairs in accordance with Applicable Specifications. **HECATE** will notify the **COUNTY ENGINEER** when repairs are to be made and the name of the contractor performing such repairs.

1.9.2. **HECATE** shall provide a written notice to the **COUNTY ENGINEER** that the repair work has been completed. The above repairs shall be made in accordance with Applicable Specifications, designed to return the final condition of the road surface to its the original pre-construction condition.

1.9.3. Upon receipt of the completion notice from **HECATE**, the **COUNTY ENGINEER** will have thirty (30) days to accept or reject the above work, which approval shall not be unreasonably withheld or conditioned. If a rejection notice is tendered by the **COUNTY ENGINEER** with the reasons for the rejection, **HECATE** will make the necessary repairs as identified in the rejection notice.

1.10 FAILURE TO REPAIR

1.10. If **HECATE** fails to repair any damage to **DESIGNATED ROADS** that **HECATE** is required by this **AGREEMENT** to repair, the **COUNTY ENGINEER** may request in writing that **HECATE** perform such repair. If **HECATE** fails to commence such repairs with thirty (30) days and thereafter to maintain reasonable progress in the performance of such repairs, then the **COUNTY ENGINEER** may make such repairs and shall invoice **HECATE** for costs incurred in connection with repairs. If **HECATE** has been delayed in commencing repairs within ten (10) days due to weather, **HECATE** may ask for an extension. **HECATE** shall pay such invoiced amounts within thirty (30) days following receipt of such invoice.

1.10.1. If **HECATE** does not fulfill its obligation to repair roads after the construction of the **HIGHLAND SOLAR FARM** is completed, the **COUNTY ENGINEER** may draw against the Performance Assurance Bond, subject to the conditions set forth in Section 2.7 as set forth below.

2. BASIC TERMS OF DESIGNATED ROAD USE

2.1 OBEY ALL TRAFFIC LAW

2.1.1. All vehicles driven by **HECATE** or its **REPRESENTATIVES** shall abide by all local, state, and federal speed limits as posted or, if not posted, as otherwise applicable.

2.1.2. All vehicles driven by **HECATE** or its **REPRESENTATIVES** shall comply with all reasonable requests of the **COUNTY ENGINEER** to take necessary precautions designed to protect the traveling public. These precautions include the immediate removal of dirt, mud, and debris carried onto the said road by trucks and trailers hauling material to the **HIGHLAND SOLAR FARM**. Any road cleaning activity must be performed by **HECATE** or its

REPRESENTATIVES on an ongoing basis with or without notice from the **COUNTY ENGINEER**.

2.2 SIGNAGE

2.2.1. During construction of the **HIGHLAND SOLAR FARM** site, **HECATE** and its **REPRESENTATIVES** shall be responsible for placing and maintaining signage in compliance with applicable provisions of the Ohio Manual on Uniform Control Devices.

2.3 NOTICE OF ROAD CLOSURES

2.3.1. **HECATE** shall provide to the **COUNTY ENGINEER**:

- 1.) Notice of **DESIGNATED ROAD closures** (including time and expected duration) by fax and e-mail five (5) business days in advance of such closures and
- 2.) **HECATE** shall designate a person to coordinate the transportation related activities of **HECATE** during construction of the project.

2.3.2. If the **COUNTY ENGINEER** objects, to such road closures, he must notify **HECATE** within three (3) business days after he receives notice and current maps, and may object to such closure or limited access on grounds of public safety or substantial public inconvenience. The **PARTIES** shall cooperate reasonably to find an alternative to the planned closure or limited access or otherwise minimize disruption to **TOWNSHIPS** and **COUNTY** road traffic and the **HECATE** construction activities and schedule.

2.3.3. This **AGREEMENT** shall not prohibit the **COUNTY ENGINEER** from closing a road to any vehicle or equipment if such closing is authorized by law and is necessary for safety or is a temporary closing due to climatic conditions or an act of God or war.

2.4 WEIGHT OF VEHICLES

2.4.1. Vehicles used by **HECATE** and its **REPRESENTATIVES** weighing more than five (5) tons shall travel only on **DESIGNATED ROADS**.

2.5 DUST CONTROL

2.5.1. In the event that water alone is insufficient for fugitive dust control during construction of the **HIGHLAND SOLAR FARM**, **HECATE** shall use a commercially recognized dust palliative to control the airborne dust created or contributed to by **HECATE** and its **REPRESENTATIVES** on gravel covered **DESIGNATED ROADS**. The **COUNTY ENGINEER** may provide a written request to **HECATE** for additional dust control measures. The measures must be consistent with all environmental laws and regulations of the state of Ohio.

2.5.2. The dust control measures required by this **AGREEMENT** and requested by the **COUNTY ENGINEER** shall be applied within twenty-four (24) hours of written notification.

2.6 PERFORMANCE ASSURANCE BOND

2.6.1. **HECATE** shall post a Performance Assurance Bond to cover the costs of any damages made to the **DESIGNATED ROADS** during construction of the **HIGHLAND SOLAR**

FARM. The Performance Assurance Bond shall be released not later than one (1) year after the repairs contemplated by Section 1.2, 1.8 and 1.9 are complete. The **COUNTY ENGINEER** may draw upon the Performance Assurance Bond only if and to the extent the draw conditions outlined in Section 2.7 below are met.

2.6.2. The amount of the bond shall be \$200,000 of surety coverage per mile of the **DESIGNATED ROADS**.

2.6.3. The Performance Assurance Bond shall be a surety bond issued by a corporation licensed to do business in Ohio, made payable to the Highland County Board of County Commissioners. The Performance Assurance Bond shall remain in full force and effect during construction of the **HIGHLAND SOLAR FARM** and continuing in full force and effect for one (1) year after the repairs are completed, consistent with R.C. 5727.75(F)(4). The Performance Assurance Bond is intended to provide the **TOWNSHIP** and **COUNTY** with assurance that it will be paid by **HECATE** for its obligations under this **AGREEMENT**, but shall not in any way limit the amount of **HECATE'S** obligations or liabilities under this **AGREEMENT**.

2.7 DRAW CONDITIONS

2.7.1. The **COUNTY ENGINEER** may draw upon the Performance Assurance Bond only if and to the extent that **HECATE** fails or refuses to perform repairs, maintain reasonable progress in performing the repairs as determined by the **COUNTY ENGINEER** or to pay the costs of performing repairs required by Sections 1.2, 1.8 and 1.9 and such failure or refusal continues for more than thirty (30) days after notice in accordance with Section 4.4 and to the extent the **COUNTY ENGINEER** certifies the following:

- 1.) The **COUNTY ENGINEER** shall certify that all the following draw conditions have been met:
 - a.) That the **COUNTY ENGINEER** has complied with the notice requirements under this **AGREEMENT** and written notice has in fact been received by **HECATE** (as evidenced by tracking or written acknowledgement of receipt); and
 - b.) That **HECATE** has failed or refused to perform repairs or to pay the costs of performing repairs pursuant to this **AGREEMENT**; and
 - c.) That the **COUNTY ENGINEER** has performed such work and/or had such work performed; and
 - d.) That the **COUNTY ENGINEER** has incurred expenses for the performance of such work; and
 - e.) The **COUNTY ENGINEER** has evidenced to **HECATE** the amount of such expenses.

2.7.2. If the **COUNTY ENGINEER** draws upon the Performance Assurance Bond, the **COUNTY ENGINEER** shall provide a full accounting of the amount of the draw(s) and the costs of repairs to **HECATE**.

2.7.3 Nothing in this **AGREEMENT** is intended to constitute a waiver by **HECATE** of any rights or remedies it may have for any breach by the **COUNTY ENGINEER**, the **COUNTY** or the **TOWNSHIPS** of the terms of this **AGREEMENT**, including any wrongful draw against the Performance Assurance Bond.

3. COVENANTS OF THE COUNTY ENGINEER

3.1. The **COUNTY ENGINEER** shall perform his routine and regular maintenance of **DESIGNATED ROADS** and bridges and culverts thereon as required by the Ohio Revised Code.

3.2. Upon the request of **HECATE**, the **COUNTY ENGINEER** shall countersign a letter for use by **HECATE** evidencing: (1) whether the movement and transportation of overweight and oversized vehicles, equipment, loads and other necessary equipment and materials to and from the **HIGHLAND SOLAR FARM** have been properly permitted by the **COUNTY ENGINEER**; (2) that the Performance Assurance Bond has been received by the **COUNTY**; and (3) **HECATE'S** compliance with any other matter in this **AGREEMENT**.

4. GENERAL PROVISIONS

4.1 INDEMNITY AND HOLD HARMLESS AGREEMENT

4.1.1. **HECATE** shall indemnify, defend, and hold the **COUNTY ENGINEER**, the **TOWNSHIPS** and **COUNTY** harmless for any and all claims, demands, suits, actions, proceedings, or causes of actions brought against the **COUNTY ENGINEER**, the **TOWNSHIPS** and **COUNTY**, its officers, affiliates, agents and employees of the foregoing for any judgments, liabilities, obligations, fines, penalties or expenses, including reasonable attorneys' fees and expenditures, resulting from personal injury, property damage, or damage to third persons, but only to the extent that such arise directly from the actions or omissions of **HECATE** and its **REPRESENTATIVES** in the course of performance or nonperformance by **HECATE** under or in connection with the **AGREEMENT**.

4.2 CONCURRENT USE OF DESIGNATED ROADS BY MULTIPLE PARTIES; DISPUTE RESOLUTION

4.2.1. Nothing in this **AGREEMENT** shall be construed to prevent **HECATE** from entering into any agreement with a third party who is using or will use any **DESIGNATED ROAD** or portion thereof subject to this **AGREEMENT** for the construction and operation of a solar-powered electric generating facility ("**THIRD PARTY**") to share the cost of any improvement or repair to **DESIGNATED ROADS** required by this **AGREEMENT**.

4.2.2. In the event that **HECATE** disputes whether it is the cause of any damage or any excessive damage to **DESIGNATED ROADS** requiring repair under Sections 1.6 and 1.7 of this **AGREEMENT**, **HECATE** shall promptly notify the **COUNTY ENGINEER** of any such dispute or disagreement. Upon the receipt of such notification, the **COUNTY ENGINEER** shall call a meeting with those potentially liable to determine responsibility for such damage and an equitable allocation of repair costs. The **COUNTY ENGINEER** shall facilitate the discussion among the parties. The parties shall determine the allocation of repair costs amongst themselves and the repairs required to restore the road consistent with the Ohio Department of Transportation's Office of Pavement Engineer's Pavement Design Manual (January 2021). Within five (5) business days of the aforementioned meeting, or an appropriate extension granted by the **COUNTY ENGINEER**, the parties shall submit an assessment of liability and a proposed scope of work and schedule consistent with the Ohio Department of Transportation's Office of Pavement Engineer's Pavement Design Manual (January 2021) for approval, which shall not be unreasonably withheld by the **COUNTY ENGINEER**. In the event that **HECATE** and the third parties are unable to reach

agreement on the assessment of liability, the **COUNTY ENGINEER** may resort to the procedures outlined in this **AGREEMENT**.

4.3 GOVERNING LAW – STATE OF OHIO

This **AGREEMENT** shall be governed by, and construed in accordance with, the laws of the State of Ohio, without regard to the conflict of law provisions in such state.

4.4 AMENDMENTS TO AGREEMENT

This **AGREEMENT** shall constitute the complete and entire agreement between the **PARTIES** with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall modify the written terms hereof. This **AGREEMENT** may be amended only by a written agreement signed by the **PARTIES**.

4.5 NOTICES

All notices, requests, demands and other communications required or permitted to be given by the **PARTIES** hereunder shall be in writing and shall be delivered in person or by facsimile, or by first class certified mail, postage and fees prepaid, to the address of the intended recipient as set forth below. All notices, requests, demands and other communications shall be sent to the following addresses:

**Hecate Energy
Highland LLC:**

**Hecate Energy Highland LLC
c/o D.E. Shaw & Co., L.P.
1166 Avenue of the Americas, Ninth Floor
New York, NY 10036
Attention: General Counsel
Telephone Number: (212) 478-0000
E-mail Address: desri-notices@deshaw.com**

with a copy to:

**Hecate Energy Highland LLC
c/o D.E. Shaw & Co., L.P.
1166 Avenue of the Americas, Ninth Floor
New York, NY 10036
Attention: Chris Clevenger, COO,
Telephone Number: (212) 478-0000
E-mail Address: Chris.Clevenger@deshaw.com**

and a copy to:

Hecate Energy Highland LLC

**c/o D.E. Shaw & Co., L.P.
1166 Avenue of the Americas, Ninth Floor
New York, NY 10036
Attention: Jessie Becker, Asset Manager
Telephone Number: (212) 478-0000
E-mail Address: Jessie.Becker@deshaw.com**

**Highland County
Board of
Commissioners:**

**Jeff Duncan, President
119 Governor Foraker Place; Suite 211
Hillsboro, OH 45133
Office: 937-393-1911**

**Highland County
Engineer:**

**Christopher M. Fauber P.E., P.S.
P.O. Box 297
138 Bowers Ae
Hillsboro, OH 45133
Office: 937-393-3496
Cell: 937-763-3587**

**To the
Townships:**

**Clay Township Trustees
1350 1440 Parrott Ln
Sardinia, OH 45171
Office: 937-442-2903**

**Whiteoak Township Trustees
540 Five Point Rd
Sardinia, OH 45171
Office: 937-442-3291]**

The foregoing addresses may be changed by any **PARTY** by giving written notice to the other **PARTY** as provided above.

4.6 RIGHTS AND WAIVERS

The failure of a **PARTY** to exercise any right under this **AGREEMENT** shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by a **PARTY** of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

4.7 SEVERABILITY

4.7.1. In any event that any clause, provision or remedy in this **AGREEMENT** shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

4.7.2. The status of **HECATE** under this **AGREEMENT** shall be that of an independent contractor and not that of an agent, and in accordance with such status, **HECATE** and its **REPRESENTATIVES** shall at all times during the term of this **AGREEMENT** conduct themselves in a manner consistent with such status and shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the **COUNTY ENGINEER, TOWNSHIPS** or **COUNTY**.

4.7.3. As an independent contractor, **HECATE** shall accept full responsibility for providing to its employees all applicable statutory coverage for worker's compensation, unemployment, disability or other coverage required by law.

4.8 TERMINATION AND/OR ABANDONMENT BY HECATE PRIOR TO COMPLETION OF CONSTRUCTION

4.7.1. If **HECATE** abandons or terminates construction of the **HIGHLAND SOLAR FARM**, **HECATE** shall provide written notice to the **COUNTY ENGINEER** of such abandonment or termination of construction.

4.7.2. As soon as possible after receipt of such notice, the **COUNTY ENGINEER** shall inspect said **DESIGNATED ROADS** appurtenances, including surrounding property. After final inspection of said **DESIGNATED ROADS**, the parties shall meet and all repairs that are required pursuant to the terms of this **AGREEMENT** shall be identified and thereafter completed by **HECATE** at **HECATE'S** sole expense. Following completion of all repair work, the **COUNTY ENGINEER** shall inspect and approve the same. Following approval by the **COUNTY ENGINEER**, this **AGREEMENT** shall be terminated, with the exception of the extension of the Performance Assurance Bond for one (1) year as provided for in this **AGREEMENT**. Any existing permits shall be terminated and shall no longer be in effect.

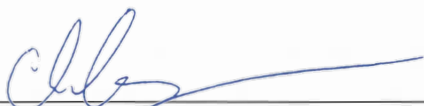
4.9 TERMINATION BY COUNTY, COUNTY ENGINEER OR TOWNSHIP

4.9.1. This **AGREEMENT** may be terminated by the **COUNTY**, the **COUNTY ENGINEER** or the **TOWNSHIPS** for any non-compliance with a material term of this **AGREEMENT**. If the **COUNTY**, the **COUNTY ENGINEER** or the **TOWNSHIP** wishes to terminate this **AGREEMENT**, the **COUNTY ENGINEER** shall provide written notice to **HECATE** in accordance with Section 4.4 of its intent to terminate at least thirty (30) days in advance of said termination date. Written notice shall include notification of the default and the underlying factual circumstances in reasonable detail. If **HECATE** has not remedied the default within thirty (30) days of receipt of the written notice, or, if cure will take longer than thirty (30) days and **HECATE** has not begun diligently to undertake the cure then the **COUNTY, COUNTY ENGINEER** and **TOWNSHIP** shall have the right to terminate the **AGREEMENT**.


4.9.2. **HECATE's** obligations under Sections 1.1 through 1.3, 1.6 through 1.10, and 2.6 shall survive the termination of this **AGREEMENT**, to the extent applicable.

IN WITNESS WHEREOF, the **PARTIES** hereto have executed this **AGREEMENT** the day and year first written above.


HECATE ENERGY HIGHLAND LLC

By: 
Name: Christopher Clevenger
Title: Chief Operating Officer


HIGHLAND COUNTY ENGINEER

By: 
Name: Christopher M. Fauber, P.E., P.S.
Title: Highland County Engineer

HIGHLAND COUNTY BOARD OF COMMISSIONERS

By: 
Name: Jeff Duncan
Title: Highland County Commissioner

By: 
Name: Terry Britton
Title: Highland County Commissioner


By: 
Name: David T. Daniels
Title: Highland County Commissioner

CLAY TOWNSHIP

By: Patricia Winkle
Name: Patricia Winkle
Title: Fiscal Officer

By: W^m Brett Glover
Name: William Brett Glover
Title: Trustee

By: Kenneth L. Bohl
Name: Kenneth L. Bohl
Title: Trustee

By: 
Name: ~~Jim~~ Massey **JAMES**
Title: Trustee

WHITEOAK TOWNSHIP

By: 

Name: Wayne Ferguson

Title: Fiscal Officer

By: 

Name: Charles Branton

Title: Trustee

By: 

Name: Fred Yochum

Title: Trustee

By: 

Name: John Stepha

Title: Trustee

EXHIBIT A

Roadway Name	County vs Township	Total Road Length to be Used in Feet
Gath Road (CR 2)	Highland County	10,849
Edwards Road (CR 56)	Highland County	6, 230
Stringtown Road (CR 60)	Highland County	15,141
New Market Road (CR 5)	Highland County	924
Rosselott Road (TR 406)	Clay Township	6,494
Clutter Lane (TR 407A)	Clay Township	1,214
Hereford Road (TR 210)	Clay Township	5,808
Marconette Road (TR 141)	Whiteoak Township	5,808
Gregory Road (TR 206)	Clay Township	1,548
Neal Road (TR 145)	Whiteoak Township	3,037

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/30/2021 5:28:51 PM

in

Case No(s). 18-1334-EL-BGN

Summary: Notice Notice Regarding Compliance with Condition 28 electronically filed by Mr. Michael J. Settineri on behalf of Hecate Energy Highland LLC