



CLAY COUNTY, TEXAS

**A RESOLUTION AND ORDER APPROVING A ROAD USE AGREEMENT BETWEEN
CLAY COUNTY TEXAS AND HECATE ENERGY HAZEL, LLC**

WHEREAS, Clay County, Texas (the "County" or Clay County) is familiar with the project contemplated by Hecate Energy Hazel, LLC in the portion of the County described on Exhibits A and B, attached hereto and incorporated herein by reference. ("Project Area");

WHEREAS, Hecate Energy Hazel, LLC contemplates making certain improvements to the real property located within the Project Area consisting of a solar power and storage electric power generating and storage facility ("Improvements");

WHEREAS, with the exception of statutory requirements, such as §240.907, Texas Transportation Code, §181.044 Texas Utilities Code, there are no applicable Clay County rules or ordinances that would require Hecate Energy Hazel, LLC to obtain zoning approval, a permit, or an authorization for the ownership, construction, operation or maintenance of a solar and storage energy and storage project and its Improvements within the Project Area. There are no presently existing Clay County rules or ordinances, other than those contained in a Tax Abatement Agreement between Clay County and Hecate Energy Hazel, LLC regarding decommissioning, safety buffer zones, set back requirements, noise restrictions, shade, flicker, shadow or visibility restrictions, or other zoning rules or regulations affecting the proposed ownership, construction, operation, or maintenance of Improvements within the Project Area;

WHEREAS, no part of the Project Area is located within the city limits of any towns within Clay County, and no part of the Project Area is located within the extraterritorial jurisdiction of any city within the County.

WHEREAS, the ownership, construction, operation and maintenance of the Improvements will require access to, egress from, encroachments into, crossings of, and possibly upgrades to one or more roads maintained by Clay County, or other county owned or maintained rights-of-way, and, or County held right-of-way easements located in Clay County, Texas;

WHEREAS, by its dedication, use, and/or maintenance of the roads and as the owner and holder of County rights-of-way and right-of-way easements in the County, the Commissioners Court of Clay County, Texas has the authority on behalf of the County to permit the Road Usage (as defined herein);

WHEREAS, Hecate Energy Hazel, LLC seeks the County's permission for such Road Usage and Clay County, Texas has agreed to grant said permission.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF CLAY COUNTY, TEXAS:

1. That the findings and recitals in the preamble to this Order are found to be true and correct

and are hereby RATIFIED, APPROVED and ADOPTED.

2. Hecate Energy Hazel, LLC shall repair any damage to County roads caused by Hecate Energy Hazel, LLC or its contractors or suppliers during the course of construction, repairing or maintenance of the Improvements and shall return such roads to the condition such roads were in prior to their use by Hecate Energy Hazel, LLC or its contractors or suppliers
 - a. Prior to the commencement of any work, or in advance of any subsequent modifications, Hecate Energy Hazel, LLC, will provide to Clay County a map identifying and designating those county-maintained roads which will be utilized to develop, install, or repair the improvements, and any points of access to property, or the location of any transmission or collection lines to be installed in the public right of way (the "Designated Roads").
 - b. Hecate Energy Hazel, LLC will coordinate with the Commissioner or appropriate county personnel responsible for the roads to be used by Hecate Energy Hazel, LLC during this project.
 - c. Hecate Energy Hazel, LLC will have a pre-construction survey completed for all designated county-maintained roads, which will include current conditions and recommendations for any preparations or modifications that will be necessary to perform required construction. In addition, the County will provide Hecate Energy Hazel, LLC, if available, with copies of any plans, cross sections and specifications relevant to the Designated Roads. Copies of all pre-construction survey documentation shall be provided to the County. All costs associated with the pre-construction survey shall be borne solely by Hecate Energy Hazel, LLC.
 - d. It is understood by Hecate Energy Hazel, LLC that no roads may be used for ingress or egress to the Project Area other than the Designated Roads. Any truck operated by an individual under contract, supervision and control of Hecate Energy Hazel, LLC, or its general contractor for the project that is found to be operating a truck on any road not identified as a Designated Road shall be issued a citation, which, with sufficient documentation, shall subject Hecate Energy Hazel, LLC to a penalty of \$1,000.00. Any repeated unpaid violations of this agreement by that operator shall result in that operator not being allowed to participate further in hauling for Hecate Energy Hazel, LLC.
 - e. Where prudent engineering and design suggests appropriate, Hecate Energy Hazel, LLC, will, at its sole costs and with the consent and approval of the County, prepare any roads in advance of the introduction of heavy or wide loads as necessary to sustain heavy or wide load trucks or where necessary in advance prepare access points from County Roads. For purposes of this agreement, the term heavy or wide loads are defined as any load exceeding 54,000 pounds in gross weight or 36,000 pounds per axle, and any load more than 12 feet in width.
 - f. It is understood that maintenance of the roads to be utilized by Hecate Energy Hazel,

LLC and to be performed by Hecate Energy Hazel, LLC include grading, dust control, traffic control and placing of sufficient base material to adequately support the anticipated loading to be imposed upon the county- maintained road or as outlined in the designation of county-maintained roads required by this agreement.

- g. To the extent necessary, the County recognizes that electrical lines will be installed within the county road right-of-way as a necessary component of the project. Such installations are subject to the following requirements:
1. Hecate Energy Hazel, LLC will utilize GPS or other suitable surveying methods to locate all bore or trench installations, and adequately mark the location of such electrical lines.
 2. Hecate Energy Hazel, LLC will bury all electrical lines at a depth of not less than four feet (4') below grade and will avoid placing the lines within the gaveled portion of the roadway or in the bottom of drainage ditches.
 3. Electrical collection cable installed beneath any road shall be encased in SDR 13.5 HDPE or equivalent for all road bores.
- h. All such preparation or repairs by Hecate Energy Hazel, LLC including the widening of roads pursuant to subsection (i) below, shall have the prior approval of the County and property owners affected by any widening, and shall be done in accordance with the standards and specifications for road generally used by the County for other county roads. If this covenant for road by Hecate Energy Hazel, LLC cannot be performed by Hecate Energy Hazel, LLC or in the event Hecate Energy Hazel, LLC is to perform this covenant within 30 days of a demand that it do so from the County, then the County may perform the road repair required of Hecate Energy Hazel, LLC pursuant to this section and Hecate Energy Hazel, LLC agrees to reimburse the County for its reasonable and necessary costs in repair to such roads. The County's cost for such repairs shall be determined using the applicable rates used by the Federal Emergency Management Administration for equipment and personnel and the County's actual cost of materials. Hecate Energy Hazel, LLC agrees to pay the cost of any such repairs within 30 days of the date Hecate Energy Hazel, LLC is billed for such services by the County.
- i. Hecate Energy Hazel, LLC may not widen or change the course of any County road without the consent of the County and any affected property owners, which county consent shall not be unreasonably withheld, conditioned, or delayed so long as Hecate Energy Hazel, LLC is not in default in its obligations under this Agreement. As a condition to granting such consent the County may require Hecate Energy Hazel, LLC to take any other precautions and covenants which may be commercially reasonably necessary to protect and maintain the roadway and its continued access by the public and the rights of adjoining property owners. Hecate Energy Hazel, LLC agrees to obtain any necessary permission or right from private property owners prior to using any private property for the delivery of goods or supplies used for the Improvements or for access to the site where any of the Improvements are being constructed.

- j. Any roads constructed upon private property by Hecate Energy Hazel, LLC will not, and shall not hereafter, become the responsibility of the County unless the County receives from the landowner a dedication of sufficient right of way, and the Commissioners Court, in its sole discretion, finds the road serves a sufficient public purpose and affirmatively accepts the road as a County road.
- k. Any County owned culverts or bridges, if any, that must be replaced or repaired in the Project Area as result of the construction of the project and heavy loads associated with the project will be repaired by Hecate Energy Hazel, LLC, subject to supervision and approval of the County.
- l. To more fully implement the terms of this agreement, Hecate Energy Hazel, LLC agrees to establish a fund (to be called the Road Use Contingency Fund) in an amount equal to One Hundred Thousand Dollars (\$100,000.00) prior to the commencement of significant construction activities for the project, to be placed on escrow with the County Treasurer of Clay County, Texas. For purposes of this Agreement, significant construction activities shall mean any vehicular traffic carrying loads in excess of 54,000 pounds. This fund shall be available to be applied to any costs incurred by Clay County for the repair of roads, bridges, culverts or other road infrastructure due to damage caused by the activities of Hecate Energy Hazel, LLC in the project zone. The County will first give notice to Hecate Energy Hazel, LLC of the damage claimed, and Hecate Energy Hazel, LLC will have thirty (30) days in which to cure any claimed damage. Failure to cure the claimed damage will authorize the County to access the Road Use Contingency Fund to the extent of the actual costs of repairs incurred by the County, as documented by actual & receipts for material, labor or equipment use rates. Upon any withdrawal from the Road Use Contingency Fund, Hecate Energy Hazel, LLC shall immediately replenish the fund to the extent of any drawdown pursuant to this section. Failure to establish the Road Use Contingency Fund, or to replenish said fund when and if necessary, shall constitute a material breach of the Road Use Agreement. At the conclusion of all construction and commencement of commercial operations, any remaining balance in said contingency fund shall be remitted to Hecate Energy Hazel, LLC within forty-five (45) days of Hecate Energy Hazel, LLC's certification of completion.
- m. Hecate Energy Hazel, LLC agrees to defend, indemnify and hold harmless Clay County and its officers, representatives and employees against any and all losses, damages, claims, expenses and liabilities for physical damage to the property of Clay County or to any person, including reasonable attorney's fees arising out of the project with respect to (1) operations of Hecate Energy Hazel, LLC, or any of its contractors or subcontractor for any intentional act or omission on the part of Hecate Energy Hazel, LLC, or its agents, representatives, employees, or its general contractor or subcontractors and all employees of such companies actually performing work related to the project, and (2) any negligent, careless or reckless act or omission on the part of Hecate Energy Hazel, LLC, or its contractors and subcontractors, and (3) any breach of this agreement. This indemnity agreement shall survive the termination of this

agreement.

- n. Hecate Energy Hazel, LLC agrees to provide insurance at all times during construction and such insurance will include: (1) Worker's compensation insurance in compliance with the laws of the State of Texas (2) Commercial General Liability insurance with minimum limits of \$2,000,000.00 per occurrence, and (3) Automobile Liability insurance. Certificates of Insurance will be provided upon request to the County. Clay County will be identified as an additional insured on all insurance policies related to the project.
3. The Commissioners' Court hereby grants permission to Hecate Energy Hazel, LLC, and its successors and assigns, during the planning and construction phases of its solar power and storage project and Improvements, and thereafter during the operation and maintenance phase of the solar power and storage project and Improvements until said solar power and storage project and Improvements are completely abandoned, to use all County roads for the Road Usages described herein, including but not limited to, (a) access and egress to and from the Hecate Energy Hazel, LLC Project, (b) encroachment of Solar and Storage Project facilities and Improvements under, along or into the right of way of said County roads, in the form of access points to and from the County road and/or underground electrical transmission or collection lines buried in the County road right-of-way, and (c) for overhead and bored underground crossings of said County roads with solar power and storage project electrical collection lines (and related facilities) interconnecting portions of the solar power and storage project and Improvements, and with transmission lines connecting the solar power and storage project and Improvements to the electrical grid power system. (collectively, the "Road Usage")
4. That the permission granted in Ordering Paragraph 2 includes the installation, maintenance and repair of solar power and storage project collection and transmission lines and related facilities within the rights of way of said County roads and right-of-way easements held by the County, and an authorization to require upgrade of such roads where necessary and conduct geo- technical and other preliminary construction analysis of such roads and rights-of-way. Hecate Energy Hazel, LLC must provide the County with notice and a map identifying the location of such Project Area facilities with reference to the County roads to be utilized by Hecate Energy Hazel, LLC before Project construction work on such roads begins. If any County roads must be upgraded in connection with such construction work, done Hecate Energy Hazel, LLC will perform such upgrade work at its cost. The County may inspect such road upgrade work and Hecate Energy Hazel, LLC will perform additional work if needed to cause the upgrades to meet the same or better road standards as in effect at the commencement of Project construction (such standards being those agreed to by all parties). Hecate Energy Hazel, LLC must repair any damage to the County roads caused by its installation, maintenance, or repair activities.

PASSED AND APPROVED at this public meeting of the Clay County Commissioners' Court. at which a quorum was present.

Signed and adopted this 11th day of DECEMBER, 2023.

Mike Campbell
Mike Campbell, County Judge

Ben Pharries
Ben Pharries, Commissioner, Pct. 1

Jack Pickett
Jack Pickett, Commissioner, Pct. 2

Retta Collins
Retta Collins, Commissioner, Pct. 3

Chase Broussard
Chase Broussard, Commissioner, Pct. 4

Attest:
Sasha Kelton
Sasha Kelton, Clay County Clerk



Hecate Energy Hazel, LLC

By: *Andrew Boggs*
Printed Name: Andrew Boggs
Title Authorized Signatory

Date: 12/18/2023