

**APPROVING RESOLUTION  
HECATE ENERGY ALBANY 1 LLC AND HECATE ENERGY ALBANY 2 LLC PROJECT**

A regular meeting of Albany County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located in Room 740 of 112 State Street in the City of Albany, Albany County, New York on October 29, 2021 at 5:00 o'clock p.m., local time.

The meeting was called to order by the Chairman of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Hon. William M. Clay	Chairman
Marlene McTigue	Secretary/Member
Anton Dreslin	Member
Travon T. Jackson	Member

Each of the members present participated in the meeting either in person or remotely pursuant to the signing into law on September 2, 2021 of Chapter 417 of the Laws of 2021.

**ABSENT:**

Michael Paparian	Treasurer/Member
Paul M. Engel, Jr.	Member
Douglas Roether	Member

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

William Murphy	Chief Executive Officer
Allen F. Maikels, CPA	Chief Financial Officer
Leslie Butcher	Executive Assistant
Walter J. Forman, Esq.	Agency Counsel
A. Joseph Scott, III, Esq.	Special Counsel

The following resolution was offered by Marlene McTigue, seconded by Travon T. Jackson, to wit:

Resolution No. 1021-\_\_

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR HECATE ENERGY ALBANY 1 LLC AND HECATE ENERGY ALBANY 2 LLC (COLLECTIVELY, THE "COMPANY").**

WHEREAS, Albany County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and

economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in June, 2021, Hecate Energy Albany 1 LLC and Hecate Energy Albany 2 LLC, Delaware State limited liability companies (collectively, the “Company”), submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in a portion of an approximately 436 acre parcel of land located between State Route 9W and County Route 101 in the Town of Coeymans, Albany County, New York (the “Land”), (2) the construction, installation and equipping on or under the Land of a buried and overhead collection line system, an interconnection substation facility, operations and maintenance structures and a system of gravel access roads, security fencing and gates, parking, landscaping and related improvements to the Land (collectively, the “Facility”) and (3) the acquisition, installation and equipping therein and thereon of certain equipment, including photovoltaic panels producing direct current (“DC”) electricity with a planned total rated alternating current (“AC”) output capacity of up to 40 megawatts (“MW”) to be mounted on fixed-tilt or tracking panel racks, inverters to convert DC electricity to AC electricity and furniture, fixtures, machinery and equipment (collectively, the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to be owned and operated by the Company as a solar-powered electric generating facility and other directly and indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on July 14, 2021 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on September 2, 2021 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located; (B) caused notice of the Public Hearing to be posted on September \_\_, 2021 on a bulletin board located at the Coeymans Town Hall located at 18 Russell Road in the Town of Coeymans, Albany County, New York and on the Agency’s website; (C) caused notice of the Public Hearing to be published on September 5, 2021 in the Daily Gazette and on September 8, 2021 in the Albany Times Union, newspapers of general circulation available to the residents of the Town of Coeymans, Albany County, New York; (D) conducted the Public Hearing on September 15, 2021 at 7:00 o’clock p.m., local time at the Coeymans Town Hall located at 18 Russell Road in the Town of Coeymans, Albany County, New York and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on October 29, 2021 (the "SEQRA Resolution"), the Agency determined that the Project is exempt from review under SEQRA pursuant to the provisions of Article 10 of the Public Service Law of the State of New York, as amended, and therefore a determination by the Agency as to whether the Project may have a "significant effect on the environment" (as said quoted term is defined under SEQRA) is not required; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Albany County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Albany County, New York by undertaking the Project in Albany County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to agency (the "Lease to Agency" or the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (B) a certain license agreement (the "License to Agency" or the "License Agreement") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a payment in lieu of tax agreement (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) a uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the Company regarding the granting of the financial assistance and the potential recapture of such assistance; (F) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (G) a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; (H) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); (I) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related

documents (collectively, the "Mortgage") from the Agency and the Company to the Company's lender with respect to the Project ("the "Lender"), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the "Loan"); and (J) various certificates relating to the Project (the "Closing Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. All action taken by the Chief Executive Officer of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Project. Special Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Special Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a "project," as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of Albany County, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction, reconstruction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$50,000,000;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) (1) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(G) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Albany County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(H) The Agency has reviewed the Hearing Report and has fully considered all comments contained therein;

(I) The Project should receive the Financial Assistance in the form of exemptions from sales tax, mortgage recording tax and real property tax based on the description of expected public benefits to occur as a result of this Project, as described on Exhibit A attached hereto and failure by the Company to meet the expected public benefits will result in a recapture event, as described on Exhibit B attached hereto; and

(J) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) lease the Project Facility to the Company pursuant to the Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) subject to receipt of the approval of the affected taxing jurisdictions, enter into the Payment in Lieu of Tax Agreement; (E) enter into the Uniform Agency Project Agreement; (F) enter into the Section 875 GML Recapture Agreement; (G) secure the Loan by entering into the Mortgage; and (H) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chairman of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. (A) The Chairman of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairman shall approve, the execution thereof by the Chairman to constitute conclusive evidence of such approval.

(B) The Chairman of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the

terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Hon. William M. Clay	VOTING	<u>Yes</u>
Michael Paparian	VOTING	<u>Absent</u>
Marlene McTigue	VOTING	<u>Yes</u>
Anton Dreslin	VOTING	<u>Yes</u>
Paul M. Engel, Jr.	VOTING	<u>Absent</u>
Travon T. Jackson	VOTING	<u>Yes</u>
Douglas Roether	VOTING	<u>Absent</u>

The foregoing Resolution was thereupon declared duly adopted.

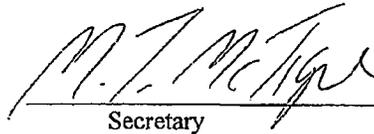
STATE OF NEW YORK        )  
                                      ) SS.:  
COUNTY OF ALBANY        )

I, the undersigned Secretary of Albany County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 29, 2021 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Chapter 417 of the Laws of 2021 (the "2021 Laws"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given; and (D) there was a quorum of the members of the Agency, either in person or attending remotely in accordance with the 2021 Laws, throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 28th day of February, 2022.

  
\_\_\_\_\_  
Secretary

(SEAL)

EXHIBIT A

DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Albany County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or NO)		Expected Benefit
1.	Retention of existing jobs	<input type="checkbox"/> Yes	<input type="checkbox"/> No	N/A
2.	Creation of new permanent jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	2 full time equivalent new jobs at the Project Facility within 2 years of the date hereof.
3.	Creation of construction employment for local labor (i.e., approximately 60% of labor resident from Albany County)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Average of 96 full time equivalent construction jobs at the Project Facility for local labor during an estimated construction period of 12 months.
4.	Private sector investment	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$50,000,000 (est.) at the Project Facility within 2 years of the date hereof.
5.	Estimated value of tax exemptions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Approximately \$4,000,000 of tax exemptions from sales and use tax, \$625,000 from mortgage recording tax and regarding real property tax exemption (see Application – and any PILOT Agreement to be approved by Town and School District).
6.	Likelihood of project being accomplished in a timely fashion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	High likelihood of project being completed in a timely manner.
7.	Extent of new revenue provided to local taxing jurisdictions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The Project will result in increased revenues to the local taxing jurisdictions.
8.	Any additional public benefits	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The Project will result in additional development in the area.
9.	Regional wealth creation (% of sales/customers outside of the County)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	N/A
10.	Located in a highly distressed census tract	<input type="checkbox"/> Yes	<input type="checkbox"/> No	N/A
11.	Alignment with local	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The Project is consistent with

	planning and development efforts			local planning and development efforts.
12.	Promotes walkable community areas	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	The Project site is not located in an urban setting with sidewalks.
13.	Elimination or reduction of blight	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No <input type="checkbox"/>	The Project site is not located in a blighted area.
14.	Proximity/support of regional tourism attractions/facilities	<input type="checkbox"/> Yes	<input type="checkbox"/> No	N/A
15.	Local or County official support	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The Project has local and County support.
16.	Building or site has historic designation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	There is no historic designation.
17.	Provides brownfield remediation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	No brownfields present.

## **EXHIBIT B**

### **DESCRIPTION OF THE RECAPTURE EVENTS**

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary agree that the following shall constitute recapture events with respect to the Project and the granting of the Financial Assistance:

- (1) failure to complete the acquisition, construction, and installation of the Project Facility;
- (2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) of the Uniform Agency Project Agreement and in the Application;
- (3) liquidation of substantially all of the Company's operating assets and/or cessation of substantially all of the Company's operations;
- (4) relocation of all or substantially all of Company's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (5) transfer of jobs equal to at least fifteen percent (15%) of the Company's Employment Level out of Albany County, New York;
- (6) failure by the Company to comply with the annual reporting requirements or to provide the Agency with requested information;
- (7) sublease of all or part of the Project Facility in violation of the Basic Documents;
- (8) a change in the use of the Project Facility, other than as a solar-powered electric generating facility and other directly and indirectly related uses; or
- (9) failure by the Company to make an actual investment in the Project by the Completion Date equal to or exceeding 80% of the Total Project Costs as set forth in the Application.