

**MEMORANDUM OF AGREEMENT AMONG
TOP HAT WIND ENERGY LLC,
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, AND THE
ILLINOIS STATE HISTORIC PRESERVATION OFFICER
REGARDING CONSTRUCTION OF A SIXTY (60) WIND TURBINE DEVELOPMENT
IN LOGAN COUNTY, ILLINOIS
(SHPO LOG #004050123)**

WHEREAS, Top Hat Wind Energy LLC (“Top Hat”) plans to undertake the construction of a new wind energy development consisting of sixty (60) wind turbines in Logan County, Illinois; and

WHEREAS, the project requires approval of a National Pollutant Discharge Elimination System (“NPDES”) Construction General Permit and Storm Water Pollution Prevention Plan (“SWPPP”) from the Illinois Environmental Protection Agency (“IEPA”), thereby making the project an Undertaking subject to review under the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420) and its implementing rules (17 IAC 4180) (Act); and

WHEREAS, Top Hat has consulted with the Illinois State Historic Preservation Office (“SHPO”), a Division of the Illinois Department of Natural Resources (“IDNR”), pursuant to the Act; and

WHEREAS, the Office currently resides within IDNR, and the Director of IDNR is the duly designated State Historic Preservation Officer (“Officer”); and

WHEREAS, on February 11, 2024 the SHPO determined that the properties at 2094 1100th Street, Chestnut (Gothic arch barn/corn crib with cupola); 1375 2150th Avenue, Beason; Richard and John Farris Farmstead, 1450 2275th Avenue, Beason; Edwards and Mary Gibson Farmstead, 2251 1450th Street, Beason; and a Warren truss farm access bridge over the north fork of Lake Fork Creek contain buildings and structures (the “Buildings and Structures”) that are eligible for listing on the National Register of Historic Places (“NRHP”); and

WHEREAS, the Officer has determined that the Undertaking will have an adverse visual effect on the above-listed Buildings and Structures that are eligible for the NRHP; and

NOW, THEREFORE, Top Hat, IEPA, and the Officer agree that the Undertaking shall be implemented in accordance with the following stipulations in this Memorandum of Agreement (“Agreement”) in order to mitigate the adverse effects of this Undertaking to the NRHP-eligible Buildings and Structures.

STIPULATIONS

I. MITIGATION

Top Hat shall retain a historical contractor(s) of its choice (“Contractor”) who meets the Secretary of the Interior’s Qualifications (36 CFR Part 61, <https://www.nps.gov/articles/sec-standards-prof-quals.htm>) to complete the

measures described below. The Developer will ensure that the mitigation described below is completed by the Contractor. The Contractor must consult with the Officer prior to the initiation of the work to ensure that expectations are understood.

A. Historic Context

1. The Contractor shall prepare a thorough historic context document (“Historic Context”) regarding the life of Vaughn De Leath.
2. The Historic Context shall be prepared through primary research into Vaughn De Leath’s life and include any reasonably available information on any associated extant properties in Logan County and elsewhere in Illinois.
3. The Historic Context should include consultation with local historical societies and outreach to any remaining family in the area, as applicable.

B. Draft Submission

1. The Contractor shall email the 95% draft of the Historic Context documentation in .pdf format to the Officer for review and comment.
2. When the Officer accepts in writing the 95% draft submission, the Contractor shall incorporate into the recordation any comments that the Officer provides and complete the final documentation.

C. Final Submission

1. The Contractor shall complete the Historic Context documentation within one (1) year of the Effective Date of this Agreement, unless otherwise approved by the Officer.
2. Upon completion of the final Historic Context documentation, the Contractor shall submit the following to the Officer:
 - a. The final Historic Context documentation in .pdf format.
 - b. Any other supporting materials that the Contractor believes necessary for the Historic Context.
3. Upon final approval of the Officer that the recordation is complete, the Officer will submit the Historic Context documentation and upload the Historic Context documentation to the SHPO website.
4. Following final approval of the Historic Context documentation by the Officer, the Contractor shall host a public webinar regarding the Historic Context documentation in coordination with SHPO (the “Webinar”). The Webinar shall be recorded and made available for viewing on the SHPO website. The Webinar shall be advertised on the SHPO website and on public community and government websites in Logan County, as approved by the Officer.

II. DURATION

This Agreement shall be effective until the final Historic Context documentation is approved and accepted by the Officer and the Webinar is uploaded to the SHPO website according to Stipulations I.C.3. and I.C.4. above, or it is amended or terminated and replaced, whichever occurs first. Prior to such time, Top Hat may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation VI AMENDMENTS below. Top Hat shall notify the signatories as to the course of action it will pursue.

III. POST-REVIEW ENCOUNTERS

If potential historic properties are encountered or unanticipated effects on historic properties found, Top Hat shall consult with the Officer immediately and make reasonable efforts to avoid, minimize, or mitigate adverse effects to such properties. In the event of an unanticipated discovery of human remains or burials, Top Hat understands and agrees that it must immediately stop work within the area of discovery, consult with the Officer, and comply with the Human Remains Protection Act (20 ILCS 3440) and its implementing rules (17 IAC 4170) as administered by IDNR, which provides that no human remains shall be disturbed without a permit issued by IDNR.

IV. MONITORING AND REPORTING

Each year following the execution of this Agreement until it expires or is terminated, Top Hat shall provide all parties to this Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Top Hat's efforts to carry out the terms of this Agreement.

V. DISPUTE RESOLUTION

Should any signatory to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, Top Hat shall consult with the signatories to resolve the objection. If the signatories cannot agree regarding a dispute, the signatories shall utilize the procedures provided in 20 ILCS 3420/4e. Top Hat's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy is signed by all of the signatories.

VII. TERMINATION

If any signatory to this Agreement determines that its terms become impossible to carry out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulations V and VI above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

VIII. COUNTERPARTS; FACSIMILE OR .PDF SIGNATURES

This Agreement may be executed in counterparts, each of which shall be considered an

original and together shall be one and the same Agreement. A facsimile or .pdf copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

EXECUTION of this Agreement by signatories, and the implementation of its terms evidence that the signatories have afforded the Officer an opportunity to comment on the effects of the Undertaking in compliance with the Act.

[Signature Pages to follow]

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SIGNATORY

TOP HAT WIND ENERGY LLC (Top Hat)

DocuSigned by:
Michael Kaplan
Signature: _____ Date: 3/8/2024
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Name: Michael Kaplan

Title: vice president

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SIGNATORY

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA)

Signature: _____ Date: _____

Name: _____

Title: _____

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SIGNATORY

ILLINOIS DEPUTY STATE HISTORIC PRESERVATION OFFICER (OFFICER)

By: Carey L. Mayer Date: 3/11/2024
Carey L. Mayer, AIA
Deputy State Historic Preservation Officer
Illinois Department of Natural Resources