

Date: June 8, 2020

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held electronically via conference call on the 8th day of June, 2020, the following members of the Agency were:

Present: Frederick C. Braun III  
Martin Callahan  
Scott Middleton  
Gary Pollakusky  
Frank C. Trotta

Recused:

Excused: Felix J. Grucci, Jr.  
Ann-Marie Scheidt

Also Present: Lisa M.G. Mulligan, Chief Executive Officer  
James M. Tullo, Deputy Director  
William F. Weir, Nixon Peabody  
Howard Gross, Weinberg, Gross & Pergament  
Annette Eaderesto, IDA Counsel  
Jocelyn Linse, Executive Assistant  
Terri Alkon, Administrative Assistant  
Amy Illardo, Administrative Assistant  
Carol Trottere, Todd Shapiro Associates

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the transfer of ownership of up to 100% of the equity interests in the Company in connection with a certain industrial development facility more particularly described below (Orbit Bloom Energy, LLC 2020 Facility).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Braun  
Callahan  
Middleton  
Pollakusky  
Trotta

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO THE TRANSFER OF OWNERSHIP OF ORBIT BLOOM ENERGY, LLC TO DG FUEL CELL, LLC AND TO THE CONTINUED LEASING OF THE FACILITY TO ORBIT BLOOM ENERGY, LLC.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created with the authority and power, among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously provided assistance to Orbit Bloom Energy, LLC, a Delaware limited liability company authorized to transact business in the State of New York (the “**Company**”), in the acquisition of a ground leasehold interest in an approximately 1.5 acre portion of land located at 3601 Horseblock Road, Medford, New York 11763 (more particularly described as Suffolk County Tax Map No. 0200-738.00-02.00-p/o 003.001) (the “**Land**”), and the construction of an approximately 5,000 square foot, 6.0 MW fuel cell power plant thereon (the “**Improvements**”), and the acquisition and installation of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be sub-subleased and subleased by the Agency to the Company and used by the Company to supply clean energy to the residents of the Town of Brookhaven (collectively, the “**Project**”); and

WHEREAS, the Agency previously acquired subleasehold interest in the Land and a leasehold interest in the Improvements and the Equipment pursuant to a certain Company Lease Agreement, dated as of February 1, 2020 (the “**Company Lease**”), by and between the Company and the Agency, a memorandum of which Company Lease was to be recorded in the office of the Suffolk County Clerk; and

WHEREAS, the Agency is currently sub-subleasing and subleasing the Facility to the Company, pursuant to a certain Lease and Project Agreement, dated as of February 1, 2020 (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, pursuant to Section 8.3 of the Lease Agreement, the Company may not transfer ownership of the Company without the prior written consent of the Agency; and

WHEREAS, DG Fuel Cell, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of DG Fuel Cell, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, “**DG Fuel Cell**”), has now applied to the Agency for the Agency’s consent to the acquisition by DG Fuel Cell of up to one hundred percent (100%) of the equity interests in the Company; and

WHEREAS, the Company has requested the Agency's consent to transfer up to one hundred percent (100%) of the equity interests in the Company to DG Fuel Cell, pursuant to Section 8.3 the Lease Agreement; and

WHEREAS, the Company shall remain as the lessee of the Project from the Agency pursuant to the Lease Agreement; and

WHEREAS, the Company and Bloom Energy Corporation ("**Bloom Energy**"), will enter into a long term Operations and Maintenance Agreement (the "**Operating Agreement**"), whereby Bloom Energy will operate and maintain the Project for the Company; and

WHEREAS, the Agency will consent to the transfer of ownership of up to 100% of the equity interests in the Company pursuant to this resolution and a certain Consent of Agency to Change in Ownership of Company, dated as of June 8, 2020 or such other date as may be determined by the Chairman or CEO and upon the advice of counsel to the Agency (the "**Consent**"); and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York;

WHEREAS, the Company and DG Fuel Cell have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the transfer of ownership of up to 100% of the equity interests in the Company and the continued subleasing and sub-subleasing of the Facility.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(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; and

(b) The Facility continues to constitute a "project", as such term is defined in the Act; and

(c) The transfer of ownership of up to 100% of the equity interests the Company to DG Fuel Cell and the execution, delivery and performance of the Operating Agreement between the Company and Bloom Energy will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The transfer of ownership of up to 100% of the equity interests in the Company to DG Fuel Cell and the execution, delivery and performance of the Operating

Agreement between the Company and Bloom Energy are reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of the Company and its counsel, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to consent to the transfer of ownership of up to 100% of the equity interests in the Company to DG Fuel Cell and to the execution, delivery and performance of the Operating Agreement between the Company and Bloom Energy; and

(g) The Consent will be an effective instrument whereby the Agency will provide its consent to the transfer of ownership of up to 100% of the equity interests in the Company, including its interests in the Facility, to DG Fuel Cell.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) consent to the transfer of the ownership of up to 100% of the equity interests in the Company to DG Fuel Cell and the execution, delivery and performance of the Operating Agreement; (ii) execute, deliver and perform the Consent, and (iii) execute, deliver and perform such related documents as may be, in the judgment of the Chairman, Vice Chairman, Chief Executive Officer or counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution.

Section 3. Subject to the provisions of this resolution, the Lease Agreement and the Consent, the Agency hereby consents to the transfer of the ownership of up to 100% of the equity interests in the Company to DG Fuel Cell and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such transfer of ownership of the Company to DG Fuel Cell are hereby approved, ratified and confirmed.

Section 4.

(a) Subject to the provisions of this resolution and the Lease Agreement, the Chairman, Chief Executive Officer, and all other members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Consent and such documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval; and

(b) The Chairman, Chief Executive Officer, and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 5. Subject to the provisions of this resolution and the Lease Agreement, 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, 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 6. Any expenses incurred by the Agency with respect to the transactions contemplated herein shall be paid by the Company and DG Fuel Cell. The Company and DG Fuel Cell agree to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 7. This resolution shall take effect immediately.

**ADOPTED:** June 8, 2020

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

I, the undersigned Chief Executive Officer of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 8th day of June, 2020, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, due to the Novel Coronavirus (COVID-19) Emergency State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended by Executive Order 202.14, issued on April 7, 2020, as extended by Executive Order issued on May 7, 2020, suspending the Open Meetings Law, and Executive Order 202.15 issued on April 9, 2020, as extended by Executive Order 202.28 issued on May 7, 2020, permitting local governments to hold public hearings by telephone and video conference and/or similar device, the Agency's Board Meeting on June 8, 2020 (the "Board Meeting"), was held electronically via conference call instead of a public meeting open for the public to attend in person. Members of the public were advised, via the Agency's website, to listen to the Board Meeting by calling (712) 770-5505 and entering access code 884-124, and were further advised that the Minutes of the Board Meeting would be transcribed and posted on the Agency's website, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 8th day of June, 2020.

By Lisa Mulligan  
Chief Executive Officer