

HARRIS BEACH PLC
ATTORNEYS AT LAW

February 25, 2020

Lisa M.G. Mulligan, CEO
Town of Brookhaven Industrial Development Agency
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RE: Town of Brookhaven Industrial Development Agency with Orbit Bloom Energy LLC – 3601 Horseblock Road, Medford, NY 11763

Dear Ms. Mulligan:

As you are aware, Orbit Bloom Energy LLC (“Company”) received an approval from the Town of Brookhaven Industrial Development Agency (“Agency”) for a straight-lease with a 20 year PILOT term.

The purpose of this letter is to request the inclusion of the following project specific terms in the Agency’s contemplated straight-lease:

1. The Company’s current Power Purchase Agreement (“PPA”) will expire on May 9, 2029. The Company proposes that the initial term of the PILOT and the straight-lease framework would expire on May 9, 2029 (or December 31, 2029 – with appropriate prorating of tax-equivalent PILOT payments) but would be subject to extension at the option of the Company for the remainder of the approved 20-year term or portions thereof, so long as the existing PPA is extended, another PPA is entered into or the Company’s operations continue through an open market transaction(s) in the applicable wholesale energy and capacity markets. Consequently, if the PPA terminates without an extension and the Company is unable to secure an alternative economically viable arrangement for the sale of electricity, the extension option would not be exercised. In that case, upon termination of the straight-lease, no recapture of benefits would be owed by the Company as virtually all of the local economic contributions promised by the Company will have already been delivered. In the event the extension option were exercised, the currently contemplated recapture schedule would remain in effect but only for the duration of the actual term of the extended PPA or other similar arrangement without recapture owed upon its conclusion.
2. As described in the Company’s original cover letter to the Agency, in conformity with general industry practices, the Company’s parent, Bloom Energy Corporation, is seeking to finance the project through a sale of all of the equity interest in the Company to a investor, AEP Onsite Partners, LLC. We respectfully request the exclusion of further notice or consent conditions from the straight lease documentation for this imminent transfer (contemplated to take place in March 2020), provided that the Company enters into a long-term O&M agreement with Bloom Energy Corporation simultaneously.

We will be providing a markup of the draft transaction documents to your counsel today incorporating these proposed terms.

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Thank you for your consideration of these transaction terms. Please let me know if I can answer any questions.

Very truly yours,



Andrew D. Komaromi

cc: Nixon Peabody LLP
William F. Weir, Esq. (via electronic mail @ WWeir@nixonpeabody.com)