

AMENDED AND RESTATED RESOLUTION OF THE TOWN OF BROOKHAVEN LOCAL DEVELOPMENT CORPORATION TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF ITS REVENUE BONDS IN AN AMOUNT SUFFICIENT TO FINANCE OR REFINANCE CERTAIN COSTS OF ACQUIRING, CONSTRUCTING, RENOVATING, EQUIPPING, FURNISHING THE AMERICAN ORGANIC ENERGY, LLC PROJECT, MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT AND REQUESTING THE SUPERVISOR OF THE TOWN OF BROOKHAVEN TO APPROVE THE ISSUANCE OF THE BONDS.

WHEREAS, American Organic Energy, LLC, a New York limited liability company, on behalf of itself and/or the principals of American Organic Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), previously applied to the Issuer to issue its tax-exempt solid waste disposal facility bonds in an amount presently estimated to be \$80,000,000, but not to exceed \$95,000,000 (the “**Series 2019A Bonds**”), pursuant to Section 142(a)(6) of the Code, and its taxable solid waste disposal facility bonds in an amount presently estimated to be \$20,000,000, but not to exceed \$30,000,000 (the “**Series 2019B Bonds**” and together with the Series 2019A Bonds, collectively, the “**Series 2019 Bonds**”), or a combination of taxable and tax-exempt bonds, in an estimated aggregate principal amount presently estimated to be \$100,000,000, but not to exceed \$125,000,000, the proceeds of which will be used for the following purposes (collectively, the “**Original Project**”):

- (A) the financing or refinancing of the construction, renovation, installation, equipping or improvements of an approximately 6.0 acre parcel of land that is encompassed as part of a larger 62.00 acre parcel of land located at 445 Horseblock Road, Yaphank, New York 11980, and the construction and equipping of an approximately 74,500 square foot building to be located thereon including, without limitation, pre-processing equipment, odor control, anaerobic digestion tanks, by-product processing, gas cleaning and compression engines (the “**Original Facility**”); and
- (B) the payment of all or a portion of the costs incidental to the issuance of the Series 2019 Bonds, including issuance costs of the Series 2019 Bonds, capitalized interest and any reserve funds as may be necessary to secure the Series 2019 Bonds. The Original Facility will continue to be owned, operated and/or managed by the Company; and

WHEREAS, the Issuer, by resolution dated June 19, 2019 (the “**Inducement Resolution**”), accepted the Company’s application, made certain determinations of the Facility under SEQR, and agreed to hold a public hearing; and

WHEREAS, subsequent to the Inducement Resolution, the Company, by letter dated, January 3, 2023, informed the Issuer that the Original Project has been amended and is moving forward and the Company requested the Issuer to amend its Inducement Resolution in order that the definitions of Project and Facility be replaced by the following:

The Company is requesting that the Issuer issue its solid waste disposal facility bonds in combination of taxable and tax-exempt bonds, in an estimated aggregate principal amount presently estimated to be \$125,000,000, but not to exceed \$130,000,000 (collectively, the “**Series 2023 Bonds**”), the proceeds of which will be used for the following purposes:

- (A) the financing or refinancing of the construction, renovation, installation, equipping or improvements of an approximately 8.2 acre parcel of land that is encompassed as part of a larger 62.00 acre parcel of land located at 445 Horseblock Road, Yaphank, New York 11980, and the construction and equipping of buildings of approximately 60,000 square feet to be located thereon including, without limitation, pre-processing equipment, odor control, anaerobic digestion tanks, by-product processing, gas cleaning and compression engines (the “**Facility**”); and
- (B) the payment of all or a portion of the costs incidental to the issuance of the Series 2023 Bonds, including issuance costs of the Series 2023 Bonds, capitalized interest and any reserve funds as may be necessary to secure the Series 2023 Bonds (the “**Project**”). The Facility will continue to be owned, operated and/or managed by the Company; and

WHEREAS, the proceeds of the Series 2023 Bonds will be loaned by the Issuer to the Company for the financing and refinancing of the Project, pursuant to Section 1411 of the New York Not-For-Profit Corporation Law (the “**Act**”); and

WHEREAS, the Act authorizes and empowers the Issuer to issue its tax-exempt or taxable solid waste disposal facility bonds to relieve or reduce employment, promote and provide for additional and maximum employment, bettering and maintaining job opportunities in structuring or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research, attracting new industry and lessening the burdens of government and acting in the public interest; and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Series 2023A Bonds will not be excluded from gross income for federal income tax purposes unless the issuance of the Series 2023A Bonds is approved by the “applicable elected representative” of the Town of Brookhaven after a public hearing (the “**Public Hearing**”) has been held on the Project and the issuance of the Series 2023 Bonds; and

WHEREAS, prior to the issuance of the Series 2023 Bonds, public notice of the Public Hearing will be given as required by Section 147(f) of the Code, the notice of which (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A and such notice will comply with all requirements of the Code; and

WHEREAS, the Public Hearing will be held to hear all persons with views in favor of or opposed to the issuance of the Series 2023 Bonds, the Project, and the other financial assistance contemplated by the Issuer, the minutes of which will be substantially in the form annexed hereto as Exhibit B; and

WHEREAS, prior to the Public Hearing, the Company will be required to submit an updated application for financial assistance (the “**Application**”) which information will be required in a form satisfactory to the Issuer (the “**Application Materials**”); and

WHEREAS, the Company reasonably expects that it will pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Series 2023 Bonds for the Project; and

WHEREAS, the Company will use funds from sources other than the proceeds of the Series 2023 Bonds which are or will be available on a short-term basis to pay for preliminary expenditures and the acquisition, construction, renovation, equipping and furnishing of the Project; and

WHEREAS, the Company reasonably expects that it will reimburse itself for the use of such funds with proceeds of indebtedness to be issued by the Issuer to finance or refinance the costs of the Project; and

WHEREAS, the Series 2023 Bonds are expected to be issued in an aggregate principal amount presently estimated to be approximately \$125,000,000 but not to exceed \$130,000,000; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Issuer constitutes a “State Agency” and is therefore an “Involved Agency” for the Facility; and

WHEREAS, to aid the Issuer in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Issuer an Environmental Assessment Form and related documents (the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Issuer; and

WHEREAS, the Questionnaire has been reviewed by the Issuer; and

WHEREAS, the Issuer constitutes an “Involved Agency” (as defined in SEQR); and

WHEREAS, the construction and operation of the Facility is an “Action” under SEQR; and

WHEREAS, the Brookhaven Town Board (the “**Town Board**”), as an Involved Agency under SEQR, declared its intent to act as Lead Agency for purposes of review of the Facility under SEQR, and coordinated review with Involved and Interested Agencies; and

WHEREAS, no Involved Agency objected to the Town Board, acting as Lead Agency for purposes of review of the Facility under SEQR, and therefore, the Town Board, was the Lead Agency; and

WHEREAS, on October 1, 2015, the Lead Agency, following a coordinated review, determined that the Facility to be a Type I Action as identified under SEQR; and

WHEREAS, the Town Board has completed Parts 2 and 3 of the full Environmental Assessment Form, reviewed the criteria for making a determination of significance comparing these criteria to identified impacts and has made a determination that the proposed Facility will not result in significant adverse impacts to the environment for the Action; and

WHEREAS, the Company has agreed to indemnify the Issuer against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Issuer to the Company;

NOW, THEREFORE, BE IT RESOLVED by the Town of Brookhaven Local Development Corporation (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Questionnaire completed by the Company and reviewed by the Issuer and other representations and information furnished by the Company, the Lead Agency, following coordinated review, determined that, based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Lead Agency felt necessary to review, the Facility will not result in significant adverse impacts to the environment and, therefore an environmental impact statement will not be prepared. That determination constitutes a negative declaration for purposes of SEQR, which is binding on the Issuer.

Section 2. Nothing herein shall be construed as committing the Issuer to approve the acquisition, construction, renovation, equipping and financing of the Project until such time as the Company has provided the Issuer with the Application Materials, the Issuer will undertake to review and determine that the Application is in final form and the Issuer will consider the Company's request for financial assistance. Upon receipt from the Company and review by the Issuer of the Application Materials, the Issuer is hereby authorized to publish notice of the Hearing and to hold the Hearing in accordance with the provisions of Section 147(f) of the Code.

Section 3.

- (a) Subject to the provisions of this resolution, the financing and refinancing of the Project by the Issuer through the issuance of the Series 2023 Bonds pursuant to the Act, and the provision of other financial assistance in connection therewith pursuant to the Act will relieve or reduce employment, promote and provide for additional and maximum employment, bettering and maintaining job opportunities in structuring or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research, attracting new industry and lessening the burdens of government and acting in the public interest of the Act and the same is, therefore, approved;
- (b) Subject to the provisions of this resolution, it is desirable and in the public interest for the Issuer to issue the Series 2023 Bonds for the purposes of financing or refinancing the costs of the acquisition, construction, renovation, equipping and furnishing of the Project,

together with necessary incidental expenses in connection therewith as reflected in the Company's application to the Issuer, as amended from time to time prior to the issuance of the Series 2023 Bonds. The currently estimated aggregate principal amount of the Series 2023 Bonds to be issued is approximately \$125,000,000, but not to exceed \$130,000,000.

Section 4. Subject to the adoption of a final authorization resolution after the Public Hearing has been held and approval of the issuance of the Series 2023A Bonds by the Hon. Edward P. Romaine, Supervisor, Town of Brookhaven, Suffolk County, and the compliance with any other applicable provisions of the Code, the Issuer shall (i) issue the Series 2023 Bonds in an amount and with maturities, an interest rate, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer, (ii) loan the proceeds of the Series 2023 Bonds to the Company pursuant to the terms of a Loan Agreement whereby the Company will be obligated, among other things, to make loan payments to or for the account of the Issuer in amounts and at times so that such loan payments will be adequate to pay the principal of, premium, if any, and interest on the Series 2023 Bonds, and (iii) secure the Series 2023 Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Series 2023 Bonds mutually deem appropriate. If the proceeds of the sale of the Series 2023 Bonds are insufficient to finance or refinance the Project, the Issuer will, subject to the terms and conditions to be agreed upon between the Issuer and the Company, and upon the request of the Company, take such actions and execute such documents as may be necessary to effect the issuance from time to time of additional bonds, whether on a parity with the Series 2023 Bonds or otherwise, for the purpose of paying the costs of completing the Project.

Section 5. To the extent the Company has paid or incurred or will pay or incur preliminary expenditures or hard costs in connection with the Project with its current funds, it reasonably expects to reimburse itself with proceeds from the Series 2023 Bonds. This Resolution is intended to be a declaration of official intent pursuant to Section 1.150-2 of the Treasury Regulations to reimburse prior expenditures made by the Company for the Project with proceeds of the Series 2023 Bonds.

Section 6. The law firm of Nixon Peabody LLP is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Series 2023 Bonds.

Section 7. Counsel to the Issuer and Bond Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Series 2023 Bonds.

Section 8. The Chairman and Chief Executive Officer of the Issuer are hereby authorized and directed to distribute copies of this amended and restated inducement

resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this amended and restated inducement resolution.

Section 9. This resolution shall take effect immediately and shall be continuously available for inspection by the general public during normal business hours at the Issuer's office.

Section 10. This resolution amended and restates in full the Inducement Resolution dated June 19, 2019.

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

I, the undersigned Chief Executive Officer, of the Town of Brookhaven Local Development Corporation, DO HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the Town of Brookhaven Local Development Corporation (the “**Issuer**”) with the original thereof on file in the office of the Issuer, and that the same is a true and correct copy of such resolution and of the proceedings of the Issuer in connection with such matter.

Such resolution was passed at a meeting of the Issuer duly convened in public session on January 11, 2023, at the Town of Brookhaven Local Development Corporation, 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, at which the following members were:

Present: Frederick C. Braun III, Chairman
 Martin Callahan, Treasurer
 Ann-Marie Scheidt, Secretary (via Zoom)
 Gary Pollakusky, Asst. Secretary
 Frank C. Trotta, Asst. Treasurer (via Zoom)
 Mitchell H. Pally, Member

Recused:

Excused: Felix J. Grucci, Jr., Vice Chair

Also Present: Lisa M. G. Mulligan, Chief Executive Officer
 Lori LaPonte, Chief Financial Officer
 Amy Illardo, Director of Marketing and Project Development
 John LaMura, Deputy Director
 Jocelyn Linse, Executive Assistant
 Terri Alkon, Administrative Assistant
 Annette Eaderesto, Esq., Counsel to the Agency
 William F. Weir, Esq., Transaction Counsel
 Howard Gross, Esq., Transaction Counsel (via Zoom)

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

Voting Aye

Voting Nay

Braun
Callahan
Scheidt
Pollakusky
Trotta
Pally

and, therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Issuer had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of January 11, 2023.

By: 
Lisa MG Mulligan
Chief Executive Officer

EXHIBIT A

NOTICE OF SUPPLEMENTAL PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a supplemental public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “**Code**”), will be held by the Town of Brookhaven Local Development Corporation (the “**Issuer**”) on the ____ day of _____, 2023, at _____ a.m., local time, at One Independence Hill, 2nd Floor, Economic Development Office Conference Room, Farmingville, New York 11738 in connection with the following matters:

American Organic Energy, LLC, a New York limited liability company, on behalf of itself and/or the principals of American Organic Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Issuer to issue a combination of taxable and tax-exempt bonds, in an estimated aggregate principal amount presently estimated to be \$125,000,000, but not to exceed \$130,000,000 (the “**Series 2023 Bonds**”), the proceeds of which will be used for the following purposes (collectively, the “**Project**”):

- (A) the financing or refinancing of the construction, renovation, installation, equipping or improvements of an approximately 8.2 acre parcel of land that is encompassed as part of a larger 62.00 acre parcel of land located at 445 Horseblock Road, Yaphank, New York 11980, and the construction and equipping of buildings of approximately 60,000 square feet to be located thereon including, without limitation, pre-processing equipment, odor control, anaerobic digestion tanks, by-product processing, gas cleaning and compression engines (the “**Facility**”); and
- (B) the payment of all or a portion of the costs incidental to the issuance of the Series 2023 Bonds, including issuance costs of the Series 2023 Bonds, capitalized interest and any reserve funds as may be necessary to secure the Series 2023 Bonds. The Facility will continue to be owned, operated and/or managed by the Company.

The proceeds of the Series 2023 Bonds will be loaned by the Issuer to the Company to pay the costs of the Project pursuant to the terms of a Loan Agreement between the Issuer and the Company. The Series 2023 Bonds will be special obligations of the Issuer payable solely from loan payments made by the Company to the Issuer pursuant to the Loan Agreement and certain other assets of the Company pledged to the repayment of the Series 2023 Bonds. The Series 2023 Bonds shall not be a debt of the State of New York or any political subdivision thereof, including the Town of Brookhaven, and neither the State of New York nor any political subdivision thereof, including the Town of Brookhaven, shall be liable thereon.

A representative of the Issuer will, at the above-stated time and place, hear and accept oral and written comments from all persons with views in favor of or opposed to either the

issuance of the Series 2023 Bonds, the granting of other financial assistance contemplated by the Issuer including a mortgage tax exemption or the location or nature of the Project.

Minutes of the hearing will be made available to the Supervisor of the Town of Brookhaven. Approval of the issuance of the Series 2023A Bonds by the Town of Brookhaven, through the Town Supervisor, is necessary in order for the interest on the Series 2023A Bonds to be excluded from gross income for federal income tax purposes.

The Issuer previously conducted public hearings with respect to the Project on October 25, 2017 and January 26, 2018.

Dated: _____, 2023

**TOWN OF BROOKHAVEN LOCAL
DEVELOPMENT CORPORATION**

By: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT B

FORM OF MINUTES OF PUBLIC HEARING HELD ON
_____, 2023

TOWN OF BROOKHAVEN LOCAL DEVELOPMENT CORPORATION
(AMERICA ORGANIC ENERGY, LLC FACILITY)

1. _____, _____ of the Town of Brookhaven Local Development Corporation (the “**Issuer**”), called the hearing to order.

2. _____, then appointed _____ the hearing officer of the Issuer, to record the minutes of the hearing.

3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Issuer and the location and nature of the Facility as follows:

American Organic Energy, LLC, a New York limited liability company, on behalf of itself and/or the principals of American Organic Energy, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Issuer to issue a combination of taxable and tax-exempt bonds, in an estimated aggregate principal amount presently estimated to be \$125,000,000, but not to exceed \$130,000,000 (the “**Series 2023 Bonds**”), the proceeds of which will be used for the following purposes (collectively, the “**Project**”):

- (A) the financing or refinancing of the construction, renovation, installation, equipping or improvements of an approximately 8.2 acre parcel of land that is encompassed as part of a larger 62.00 acre parcel of land located at 445 Horseblock Road, Yaphank, New York 11980, and the construction and equipping of buildings of approximately 60,000 square feet to be located thereon including, without limitation, pre-processing equipment, odor control, anaerobic digestion tanks, by-product processing, gas cleaning and compression engines (the “**Facility**”); and
- (B) the payment of all or a portion of the costs incidental to the issuance of the Series 2023 Bonds, including issuance costs of the Series 2023 Bonds, capitalized interest and any reserve funds as may be necessary to secure the Series 2023 Bonds. The Facility will continue to be owned, operated and/or managed by the Company.

The proceeds of the Series 2023 Bonds will be loaned by the Issuer to the Company to pay the costs of the Project pursuant to the terms of a Loan Agreement between the Issuer and the Company. The Series 2023 Bonds will be special obligations of the Issuer payable solely from loan payments made by the Company to the Issuer

pursuant to the Loan Agreement and certain other assets of the Company pledged to the repayment of the Series 2023 Bonds. The Series 2023 Bonds shall not be a debt of the State of New York or any political subdivision thereof, including the Town of Brookhaven, and neither the State of New York nor any political subdivision thereof, including the Town of Brookhaven, shall be liable thereon.

4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Issuer and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at _____.

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

I, the undersigned Chief Executive Officer of the Town of Brookhaven Local Development Corporation, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Town of Brookhaven Local Development Corporation (the "Issuer") on _____, 2023, at _____ a.m. local time, at the Town of Brookhaven Department of Economic Development, 1 Independence Hill, 2nd Floor, Farmingville, New York 11738, with the original thereof on file in the office of the Issuer, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of _____, 2023.

Chief Executive Officer