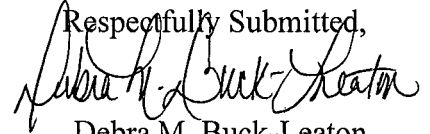


ADJOURN:

A **motion** was made by Councilman Kent to adjourn the Special Meeting of the Byron Town Board at 8:04 p.m. The motion was seconded by Councilman Thompson and carried with the following vote:

Vote: Ayes: 5 Nays: 0

Respectfully Submitted,

Debra M. Buck-Leaton
Byron Town Clerk

HOST COMMUNITY BENEFIT AGREEMENT

THIS HOST COMMUNITY BENEFIT AGREEMENT ("HCA") dated as of April 28, 2020, is entered into by and between the Town of Byron, a municipal corporation and political subdivision of the State of New York with offices at 7028 Byron Holly Road, Byron, NY and whose post office address is P.O. Box 9, Byron, NY 14422 ("Byron") and Excelsior Energy Center, LLC, a Delaware Limited Liability Company with principal offices at 700 Universe Blvd., Juno Beach, FL 33408 ("Excelsior").

WHEREAS, Excelsior has made application to the New York State Board on Electric Generation Siting and the Environment ("Siting Board") pursuant to Article 10 of the Public Service Law for the construction of a solar energy producing facilities, battery storage facilities, and substation, and switchyard in the Town of Byron ("the Project"); and

WHEREAS, the Article 10 process comprehensively examines potential impacts from the Project and the Board routinely imposes many conditions for the avoidance, minimization and/or mitigation thereof where appropriate;

WHEREAS the Project is expected to be completed and in commercial operation by December 31, 2023; and

WHEREAS, Excelsior, as a new member of the local business community, wishes to demonstrate good citizenship by making a commitment to assist the community in improving and maintaining a physical, business and social environment benefiting all members of the community, and in consideration for (1) mitigating any potential impacts from the Project on the local community as determined by the Siting Board, and (2) the Town's agreement to consult with Excelsior in good faith on a timely basis concerning any matters that may reasonably adversely affect the health and safety of the Town's residents concerning the Project's Article 10 Application or other Project-related applications for permits or approvals, by making Host Community Benefit Fee payments to Byron, subject to the conditions set forth herein; and

WHEREAS, Byron is willing to accept such Host Community Benefit Fees subject to the terms of this Agreement; and

WHEREAS, for planning and budgetary purposes, the Parties desire to document the level of financial support Excelsior is committed to provide to Byron, upon the commencement of construction of the Project as provided herein and the terms and conditions upon which the Host Community Benefit Fees will be made.

Now, therefore, in consideration of the foregoing and the mutual promises hereinafter set forth, the Parties agree as follows:

Article I – Representations and Covenants.

Section 1.1. Representations and Covenants of Byron.

That Byron makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) That Byron has the power to enter into the transaction contemplated by this HCA and to carry out its obligations hereunder.

(b) That Byron has been duly authorized to execute and deliver this HCA.

(c) Neither the execution and delivery of this HCA, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this HCA will conflict with or result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which Byron is a party or by which it is bound, or will constitute default under any of the foregoing or will conflict with or be a violation of any code, ordinance, law or regulation.

Section 1.2. Representations and Covenants of Excelsior.

Excelsior makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Excelsior is duly organized and validly existing under the laws of the State of Delaware, and is duly authorized to do business in the State of New York and has the authority to enter into this HCA and has duly authorized the execution and delivery of this HCA.

(b) Neither the execution and delivery of this HCA, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this HCA will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Excelsior is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of Excelsior under the terms of any such instrument or agreement.

(c) Except with respect to the Article 10 proceeding pending before the Siting Board, Case 19-F-0299, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of Excelsior, threatened against or affecting Excelsior, to which Excelsior is a party, and in which an adverse result would materially diminish or adversely impact on Excelsior's ability to fulfill its obligations under this HCA.

Article II - Payee/Payment of Taxes and Host Community Benefit Fee

Section 2.1. (a) Host Community Benefit Fee. Excelsior agrees to pay an annual fee to Byron at its address noted above to be calculated pursuant to this section ("Benefit Fee") commencing within thirty (30) business days of the date the Project commences construction and by each subsequent anniversary date thereafter (each a "Payment Date"). Commencement of construction is defined as the beginning of unlimited and continuous construction of the Project

but does not include staging, activities related to testing or surveying (such as geotechnical drilling and meteorological testing), together with such testing, surveying, drilling and similar pre-construction activities, including associated tree clearing, to determine the adequacy of the site for construction and the preparation of filings, nor does it include clearing and grading of the Project Area

The Benefit Fee will cover the entirety of the Project. The Benefit Fee will be calculated by the Parties as provided herein. The Parties agree that Byron's total annual payments from all sources, including but not limited to all special district charges and assessments, and Agricultural Exemption revenue, as provided below, related to the Project shall be no greater than \$1,006,522 in Year 1 (the "Annual Cap"). The Annual Cap shall escalate by 2% in each subsequent year ("Adjusted Annual Cap"). The sources to be included in the calculation comprise the following:

1. that portion of the annual PILOT payment distributed to the Town of Byron by the Genesee County Industrial Development Agency; and
2. All special district charges and assessments by the Town including but not limited to, fire district, ambulance district, and any other special districts existing at the time of commencement of the Project or created thereafter during the term of this Agreement; and
3. the increased revenue realized by the Town of Byron as a result of the elimination of agricultural exemptions on the land encompassed by the Project; and
4. The Benefit Fee, calculated as the difference between that Adjusted Annual Cap and the sum of items 1-3, above.

In each subsequent year, the Benefit Fee shall be equal to the difference between the Adjusted Annual Cap and the actual values for items 1-3 in that year.

Exhibit A contains a sample calculation and payment schedule illustrating the intended operation of the above calculation.

Excelsior agrees to make annual payments of the Benefit Fee for a period of twenty (20) years, starting with the first payment made as provided above following the commencement of construction..

(b) Notice; Cure. In the event Excelsior fails to pay the Benefit Fee by the date due under this HCA (a "Monetary Breach"), the Byron Town Board shall provide written notice of the alleged Monetary Breach specifying the details of the alleged Monetary Breach and the amount due. Excelsior shall cure any Monetary Breaches within **forty-five (45)** business days after receipt of such notice.

(c) Use of Benefit Fees; Public Purposes. The parties agree and acknowledge that the payment made hereunder is to provide revenue to Byron to be used for public purposes to be

undertaken by Byron. The revenues paid by Excelsior to Byron, which shall be utilized at the sole and absolute discretion of Byron, including, but not limited to, as a source of funding for prospective costs and expenses associated with and related to anticipated municipal services and additional infrastructural improvements.

Article III - Termination

Section 3.1. This HCA shall terminate upon full cessation of operation and/or decommissioning of Project, unless otherwise terminated by the written agreement of the parties hereto.

Section 3.2. In the event Byron assesses additional fees or modifies the terms and conditions of any permits issued to or its regulations governing operation of the Project in a manner that at the sole discretion of Excelsior materially and adversely impact the Project or requires Excelsior to change in any material manner its operations, Excelsior may opt, at its sole discretion, to terminate the HCA and have no further obligations or liability hereunder. Excelsior reserves its rights to initiate a judicial challenge to Byron's assessment of additional fees, or modifications of the terms and conditions of permits or regulations in question, which challenge shall not serve as a waiver of its rights to terminate the HCA. Nothing in this HCA shall be read as limiting the right of Byron to assess additional fees, modify the terms and conditions of any permits issued to or its regulations governing operation of the Project, as allowed by governing law, subject to any and all abatements, exemptions or any other rights, including without limitation, the rights expressly reserved by Excelsior as set forth in this Section 3.2, which Excelsior is entitled to claim.

Section 3.3. In the event that (i) Excelsior does not enter into a Payment-In-Lieu-of Tax Agreement ("PILOT Agreement") with the Genesee County Economic Development Corporation ("GCEDC"), or (ii) such PILOT Agreement with the GCEDC expires at the end of the stated term thereof and a subsequent PILOT is not entered into, or (iii) such PILOT Agreement with the GCEDC is otherwise terminated at an earlier point in time, and as a result the Project cannot commence commercial operation as defined in this HCA, then Excelsior may opt to terminate this Agreement and have no further obligation or liability hereunder..

Section 3.4.. Excelsior may terminate this Agreement and have no further obligations or liability hereunder if Excelsior has taken, or is taking, action reasonably required or desired to obtain and/or comply with any permit, certification, approval or other authorization for the Project from any federal, state, or local political subdivision or any other governmental agency, authority, or entity with jurisdiction over all or any portion of the Project (collectively, "Governmental Approvals") and , except with respect to the grant of the Article 10 certificate by the Siting Board, and subject to the other provisions in this HCA, Byron fails to act reasonably in the grant, issuance, maintenance, compliance with, or modification of any Governmental Approvals .

Section 3.5. Force Majeure. Excelsior may terminate this Agreement and have no further obligations or liability hereunder except with respect to decommissioning, in the event that it fails to commence construction, complete construction or reach commercial operation as a result

of, directly or indirectly, circumstances beyond its reasonable control, including, without limitation, commercial feasibility, including without limitation, added costs to the Project, environmental issues, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; epidemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes; acts of civil or military authority; governmental, or judicial or legislative actions or inactions ; or inability to obtain labor, material, equipment or transportation. The term "commercial operation" shall mean when the Project has commenced generating electricity (excluding any electricity generated during start-up and commissioning of the Project) for sale into the New York State bulk transmission system at full capacity.

Article IV - Miscellaneous

Section 4.1. This HCA may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument. The Parties agree that counsel to Byron shall hold the executed Agreement in escrow to be released to Excelsior within three calendar days after a vote by the GCEDC to approve the PILOT Agreement.

Section 4.2. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To Byron:

Town Supervisor
Town of Byron
Byron Town Hall
7028 Route 237
P.O. Box 9
Byron, NY 14422

With copies to:
Paul S. Boylan, Esq.
Boylan Law Office
P.O. Box 307
LeRoy, NY 14482
(585) 768-8148

To Excelsior:

Excelsior Energy Center, LLC
c/o NextEra Energy Resources, LLC
700 Universe Blvd.
Juno Beach, FL 33408

Attn: Business Management

With copies to:

Sam Laniado, Esq.
Read and Laniado, LLP
25 Eagle Street
Albany, NY 12207
Tel: (518) 465-9313

Section 4.3. This HCA shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in or for Genesee County, New York.

Section 4.4. (a) The obligations and agreements of Byron contained herein shall be deemed the obligations and agreements of the Town of Byron, and not of any trustee, officer, agent or employee of Byron in his individual capacity, and the trustees, officers, agents and employees of Byron shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of Excelsior contained herein shall be deemed the obligations and agreements of Excelsior, and not of any member, officer, agent or employee of Excelsior in his individual capacity, and the members, officers, agents and employees of Excelsior shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

Section 4.5. The failure of any Party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent breach. Unless specifically stated, the selection of any specific remedy hereunder or under any applicable law, rule or regulation ("Applicable Law") by either Party shall not be deemed an election of remedies limiting either Party's right to seek any other remedy otherwise allowed by this HCA or Applicable Law.

Section 4.6. Assignment by Byron

Byron may transfer or assign any of its rights or obligations under this HCA, provided that such transfer or assignment is due to a Byron-related financing transaction, without the prior written consent of Excelsior. Excelsior shall cooperate with Byron from time to time, including, without limitation, by entering into a consent and assignment or other agreements with Byron and the financing parties involved with any such financing or securitization in connection with

any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by the involved financing parties.

Section 4.7. Assignment by Excelsior

Excelsior may, without the consent of Byron: (a) assign this HCA or any portion thereof to any (x) purchaser or successor in and to the Project, (y) affiliate or subsidiary of Excelsior that is controlled by, controlling or under common control with Excelsior, or (z) persons or entities providing financing for the Project or any portion thereof ("Lender", and such purchaser, affiliate, and Lender are collectively defined as a "Successor"), provided such Successor assumes and agrees to be bound by this HCA by executing and submitting to Byron a notice of assignment and assumption of this HCA thirty (30) days prior to any such assignment, and may (b) pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this HCA to any to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a "Lender's Lien"). A Lender shall have the absolute right to: (a) assign its Lender's Lien; (b) take possession of and operate the Project or any portion thereof solely in accordance with Excelsior's rights under this HCA (and subject to Excelsior's obligations under this HCA) and perform any obligations to be performed by Excelsior or a Successor hereunder; or (c) exercise any rights of Excelsior hereunder. Byron shall cooperate with Excelsior, its affiliates, any Successor from time to time, including, without limitation, by entering into a consent and assignment or other agreements with such Successor and Excelsior in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Successor, including execution of a consent to the assignment of this HCA. In the event this HCA is assigned to a Successor, Excelsior shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer, but only if the Successor has in writing confirmed its acceptance of its obligations. Nothing herein shall limit in any way the right of the owners of Excelsior to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in Excelsior.

Section 4.8. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement.

Section 4.9. Notwithstanding anything in this Agreement to the contrary, each Party hereby waives any claim that they may have against the other with respect to any consequential, indirect, punitive, special or incidental damage or lost profits.

Section 4.10. In any litigation arising from or related to this agreement, the Parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement. This provision is a material inducement for the Parties to enter into this Agreement.

Section 4.11. The Parties hereby agree to execute a Road Use Agreement in the form of Exhibit B hereto.

Section 4.12. The Parties hereby agree that under Article 10 of the PSL, and its implementing regulations, before approving the Project the Siting Board must make specific findings as to, *inter alia*, the probable environmental impacts of constructing and operating the Project, and that any potential adverse environmental impacts of the Project have been adequately minimized or avoided to the maximum extent practicable. The Siting Board must also determine that the facility is designed to operate in compliance with applicable substantive local laws and regulations unless determined by the Board unreasonably burdensome in view of the existing technology, costs or the needs of consumers. The Town agrees not to oppose the Project. The Parties hereby agree to cooperate and use commercially reasonable efforts so the Project may commence construction and achieve commercial operation as proposed in the Article 10 Application. Byron further agrees to consult with Excelsior on a timely basis about any Project related matters that could reasonably adversely affect the health and safety of the residents of the Town and to work in good faith with Excelsior to arrive at commercially reasonable resolutions.

[signature page to follow]

[Signature Page to HCA]

IN WITNESS WHEREOF, the parties hereto have executed this HCA as of the day and year first above written.

TOWN OF BYRON

By: 

Name: Peter Yasses

Title: Supervisor

EXCELSIOR ENERGY CENTER, LLC,

a Delaware Limited Liability Company

By: 

Name: Matthew S Handel

Title: Vice President

Exhibit A: Host Community Benefit Fee Schedule

| Year | Esc. | County PILOT Payment | Byron-Bergen PILOT Payment | (1) Byron PILOT Payment | (2) Special District Charges (Estimated) | (3) Ag. Exemption Revenue (Estimated) | (4) Benefit Fee = (5) - (1) - (2) - (3) | (5) Annual Cap |
|------|------|----------------------|----------------------------|-------------------------|--|---------------------------------------|---|----------------|
| 1 | - | \$281,775.00 | \$675,703.00 | \$120,522.00 | \$119,000.00 | \$25,000.00 | \$742,000.00 | \$1,006,522.00 |
| 2 | 2% | \$287,410.50 | \$689,217.06 | \$122,932.44 | \$121,380.00 | \$25,500.00 | \$756,840.00 | \$1,026,652.44 |
| 3 | 2% | \$293,158.71 | \$703,001.40 | \$125,391.09 | \$123,807.60 | \$26,010.00 | \$771,976.80 | \$1,047,185.49 |
| 4 | 2% | \$299,021.88 | \$717,061.43 | \$127,898.91 | \$126,283.75 | \$26,530.20 | \$787,416.34 | \$1,068,129.20 |
| 5 | 2% | \$305,002.32 | \$731,402.66 | \$130,456.89 | \$128,809.43 | \$27,060.80 | \$803,164.66 | \$1,089,491.78 |
| 6 | 2% | \$311,102.37 | \$746,030.71 | \$133,066.03 | \$131,385.62 | \$27,602.02 | \$819,227.96 | \$1,111,281.62 |
| 7 | 2% | \$317,324.42 | \$760,951.33 | \$135,727.35 | \$134,013.33 | \$28,154.06 | \$835,612.52 | \$1,133,507.25 |
| 8 | 2% | \$323,670.90 | \$776,170.35 | \$138,441.89 | \$136,693.59 | \$28,717.14 | \$852,324.77 | \$1,156,177.40 |
| 9 | 2% | \$330,144.32 | \$791,693.76 | \$141,210.73 | \$139,427.47 | \$29,291.48 | \$869,371.26 | \$1,179,300.94 |
| 10 | 2% | \$336,747.21 | \$807,527.63 | \$144,034.95 | \$142,216.02 | \$29,877.31 | \$886,758.69 | \$1,202,886.96 |
| 11 | 2% | \$343,482.15 | \$823,678.19 | \$146,915.65 | \$145,060.34 | \$30,474.86 | \$904,493.86 | \$1,226,944.70 |
| 12 | 2% | \$350,351.80 | \$840,151.75 | \$149,853.96 | \$147,961.54 | \$31,084.36 | \$922,583.74 | \$1,251,483.60 |
| 13 | 2% | \$357,358.83 | \$856,954.79 | \$152,851.04 | \$150,920.77 | \$31,706.04 | \$941,035.41 | \$1,276,513.27 |
| 14 | 2% | \$364,506.01 | \$874,093.88 | \$155,908.06 | \$153,939.19 | \$32,340.17 | \$959,856.12 | \$1,302,043.53 |
| 15 | 2% | \$371,796.13 | \$891,575.76 | \$159,026.22 | \$157,017.97 | \$32,986.97 | \$979,053.24 | \$1,328,084.40 |
| 16 | 2% | \$379,232.05 | \$909,407.27 | \$162,206.74 | \$160,158.33 | \$33,646.71 | \$998,634.31 | \$1,354,646.09 |
| 17 | 2% | \$386,816.69 | \$927,595.42 | \$165,450.88 | \$163,361.50 | \$34,319.64 | \$1,018,606.99 | \$1,381,739.01 |
| 18 | 2% | \$394,553.03 | \$946,147.33 | \$168,759.90 | \$166,628.73 | \$35,006.04 | \$1,038,979.13 | \$1,409,373.79 |
| 19 | 2% | \$402,444.09 | \$965,070.27 | \$172,135.09 | \$169,961.30 | \$35,706.16 | \$1,059,758.72 | \$1,437,561.27 |
| 20 | 2% | \$410,492.97 | \$984,371.68 | \$175,577.80 | \$173,360.53 | \$36,420.28 | \$1,080,953.89 | \$1,466,312.49 |