

**APPROVING RESOLUTION  
PLUG POWER, INC. PROJECT**

A special meeting of the Albany County Industrial Development Agency (the "Agency") was convened in public session via videoconference in Room 740 at 112 State Street in the City of Albany, Albany County, New York on April 13, 2022 at 5:30 o'clock p.m., local time.

The meeting was called to order by the Chairman of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

|                      |                  |
|----------------------|------------------|
| Hon. William M. Clay | Chairman         |
| Michael Paparian     | Treasurer/Member |
| Marlene McTigue      | Secretary/Member |
| Anton Dreslin        | Member           |
| Travon T. Jackson    | Member           |

Each of the members present participated in the meeting either in person or remotely pursuant to the signing into law on September 2, 2021 of Chapter 417 of the Laws of 2021, as amended on January 14, 2022.

**ABSENT:**

|                    |        |
|--------------------|--------|
| Paul M. Engel, Jr. | Member |
| Douglas Roether    | Member |

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

|                            |                         |
|----------------------------|-------------------------|
| William Murphy             | Chief Executive Officer |
| Allen F. Maikels, CPA      | Chief Financial Officer |
| Leslie Butcher             | Executive Assistant     |
| Walter J. Forman, Esq.     | Agency Counsel          |
| A. Joseph Scott, III, Esq. | Special Counsel         |

The following resolution was offered by Travon T. Jackson, seconded by Marlene McTigue, to wit:

Resolution No. 0422-\_\_

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION  
WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR PLUG  
POWER, INC. (THE "COMPANY").**

WHEREAS, Albany County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial

and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more “ projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in March 2022, Plug Power, Inc., a business corporation organized and existing under the laws of the State of Delaware (the “Company”) presented an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) the acquisition and installation of certain machinery, equipment and other tangible personal property including, without limitation, tenant improvement and finish (collectively, the “Equipment”) and the undertaking of various tenant and interior fit-up and other improvements (collectively, the “Improvements”) (the Equipment and the Improvements being collectively referred to as the “Project Facility”) to the buildings containing in the aggregate approximately 350,000 square feet of space (collectively, the “Facility”) to be located on parcels of land located at 125 Vista Boulevard (Tax Map Number: 74.00-1-29.1) in the Town of Bethlehem and off New Scotland Road (Tax Map Number: 73.-2-27) in the Town of New Scotland, Albany County, New York (collectively, the “Land”), the Land and the Facility to be owned by Vista Real Estate Development LLC (the “Developer”) and leased by the Developer to the Company to be used by the Company as a manufacturing/commercial/industrial facility for commercial, manufacturing, and warehouse space and related uses; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on March 23, 2022 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chairman of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on a bulletin board located at Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, (C) caused notice of the Public Hearing to be published in the Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem and the Town of New Scotland, Albany County, New York, (D) conducted the Public Hearing at the Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Report”) which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on April 13, 2022 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the Town of Bethlehem Planning Board (the “Planning Board”) is the “lead agency” with respect to a larger project (the “Vista Real Estate Development LLC Project”) in which this Project is a part of, (B) acknowledged receipt of a negative declaration from the Planning Board issued on January 4, 2022 (the “Negative Declaration”), in which the Planning Board determined that the Vista Real Estate Development LLC Project was a “Type 1” action (as such quoted term is defined in SEQRA) but that the Vista Real Estate Development LLC Project constitutes an action which would not have a significant impact on the environment and, therefore, did not require preparation of a Draft Environmental Impact Statement, and (C) determined that no further action was required with respect to the Project, as part of the Vista Real Estate Development LLC Project; and

WHEREAS, the Agency has a general operating policy (the “Operating Policy”) with respect to the undertaking of its projects, under which the Agency generally defers to local industrial development agencies in Albany County if a project is located within the local industrial development agency’s borders, and (A) in the case of the Project, portions of the Project are located in the Towns of Bethlehem and New Scotland, and the Town of Bethlehem has its own industrial development agency (the “Town Agency”), and (B) in connection with the Application, the Company made a request to the Agency (the “Town Agency Request”) that the Agency deviate from the Operating Policy with respect to the Project Facility; and

WHEREAS, in connection with the Project, the Agency received a letter from the Company dated April \_\_, 2022 (the “Local Program Letter”) (A) explaining that, as indicated in the Application, one of the sources of funding for the Project would be \$5,000,000 from Local Programs, and (B) requesting that, based on discussions among the Agency, the Company, and Albany County, New York (“Albany County”), and the Company, the Agency participate in the Local Programs by investing \$2,000,000 in the Project (the “Agency Investment”); and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance and the making of the Agency Investment with respect to the Project will be an inducement to the Company to undertake the Project in Albany County, New York, (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York, and (C) that requiring the Company to divide the Project among the Town Agency and the Agency would potentially cause significant inefficiencies and time delays in the undertaking of the Project; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Albany County, New York by undertaking the Project in Albany County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Land and all improvements now or

hereafter located on the Land (collectively, the "Leased Premises"); (B) a certain license agreement (the "License to Agency" or the "License Agreement") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the Company regarding the granting of the financial assistance and the potential recapture of such assistance; (E) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (F) a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; (G) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); (H) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the "Mortgage") from the Agency and the Company to the Company's lender with respect to the Project ("the "Lender"), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the "Loan"); (I) if the Company requests the Agency to appoint a contractor or contractors, as agent(s) of the Agency (each, a "Contractor") (1) a certain agency indemnification agreement (the "Contractor Agency and Indemnification Agreement") by and between the Agency and the Contractor, (2) a certain recapture agreement (the "Contractor Section 875 GML Recapture Agreement") by and between the Agency and the Contractor, (3) a sales tax exemption letter (the "Contractor Sales Tax Exemption Letter"), and (4) a Thirty-Day Sales Tax Report (the "Contractor Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report") (collectively, the "Contractor Documents"); (J) if the Company intends to request the Agency to appoint (1) the Company, as agent of the Agency and (2) a Contractor, as agent of the Agency prior to closing on the Project and the Lease Agreement; agency and indemnification agreements, interim Section 875 GML recapture agreements, interim sales tax exemption letters and interim thirty-day sales tax reports (collectively, the "Interim Documents"); and (K) various certificates relating to the Project (the "Closing Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. All action taken by the Chairman, Chief Executive Officer of the Agency, Agency Counsel, and Special Agency Counsel with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Special Agency Counsel to the Agency with respect to all matters in connection with the Project. Special Agency Counsel for the

Agency is hereby authorized, at the expense of the Company, to work with Agency Counsel, the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 3. The Agency hereby finds and determines that:

(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;

(B) The Project constitutes a "project," as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of Albany County, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$15,278,978;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) (1) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(G) The granting of the Financial Assistance and the making of the Agency Investment by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Albany County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(H) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(I) The Agency has considered the proposed deviation from its Operating Policy and has determined to undertake the Project in the Towns of Bethlehem and New Scotland;

(J) (1) The Agency should make the Agency Investment in the Project, and (2) the Project should receive the Financial Assistance in the form of exemptions from sales tax based on an evaluation of the Project based on the Agency's Uniform Criteria for the Evaluation of Projects Policy and the description of expected public benefits to occur as a result of this Project, as described on Exhibit A attached hereto; and

(K) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) lease the Project Facility to the Company pursuant to the Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, construction and installed; (D) enter into the Uniform Agency Project Agreement; (E) enter into the Section 875 GML Recapture Agreement; (F) secure the Loan by entering into the Mortgage; (G) enter into the Contractor Documents; (H) enter into the Interim Documents; (I) grant the Financial Assistance with respect to the Project and (J) make the Agency Investment.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to negotiate and arrange with the Town Agency for the payment of a portion of the administrative fee that the Agency will collect from the Company in connection with the undertaking of the Project.

Section 10. 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, to 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 11. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

|                      |        |               |
|----------------------|--------|---------------|
| Hon. William M. Clay | VOTING | <u>YES</u>    |
| Michael Paparian     | VOTING | <u>YES</u>    |
| Marlene McTigue      | VOTING | <u>YES</u>    |
| Anton Dreslin        | VOTING | <u>YES</u>    |
| Paul M. Engel, Jr.   | VOTING | <u>ABSENT</u> |
| Travon T. Jackson    | VOTING | <u>YES</u>    |
| Douglas Roether      | VOTING | <u>ABSENT</u> |

The foregoing Resolution was thereupon declared duly adopted.

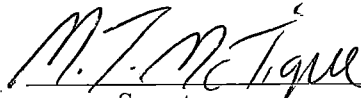
STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF ALBANY                    )

I, the undersigned Secretary of Albany County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 13, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Chapter 417 of the Laws of 2021 (the "2021 Laws"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given; and (D) there was a quorum of the members of the Agency, either in person or attending remotely in accordance with the 2021 Laws, throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 19<sup>th</sup> day of April, 2022.

  
Secretary

(SEAL)



## EXHIBIT A

### DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Albany County, New York (the "Public Benefits"):

| Description of Benefit |   | Applicable to Project<br>(indicate Yes or NO) |  | Expected Benefit   |
|------------------------|---|---|--|--|
| 1.                     | Retention of existing jobs  | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | Significant retained jobs transferred from Latham location.  |
| 2.                     | Creation of new permanent jobs  | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | Significant new job creation, as described in Application.   |
| 3.                     | Estimated value of tax exemptions                                     | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | Approximately \$1,222,318 in sales tax exemption.  |
| 4.                     | Private sector investment   | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | Estimated at an amount equal to \$9,778,978.   |
| 5.                     | Likelihood of project being accomplished in a timely fashion          | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | High likelihood of project being completed in a timely manner.   |
| 6.                     | Extent of new revenue provided to local taxing jurisdictions          | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | The Project is part of a larger project which will provide a revenue source to the "affected tax jurisdictions" in the form of PILOT payments. |
| 7.                     | Any additional public benefits  | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | The Project is a significant Capital District development.   |
| 8.                     | Local labor construction jobs   | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | The Company will endeavor to use local labor for the construction jobs.  |
| 9.                     | Regional wealth creation (% of sales/customers outside of the County) | <input type="checkbox"/> Yes                  | <input type="checkbox"/> No            | N/A  |
| 10.                    | Located in a highly distressed census tract                           | <input type="checkbox"/> Yes                  | <input type="checkbox"/> No            | N/A  |
| 11.                    | Alignment with local planning and development efforts                 | <input checked="" type="checkbox"/> Yes       | <input type="checkbox"/> No            | The Project is consistent with local planning and development efforts.   |
| 12.                    | Promotes walkable community areas                                     | <input type="checkbox"/> Yes                  | <input checked="" type="checkbox"/> No | The Project site is not located in an urban setting with sidewalks.  |
| 13.                    | Elimination or reduction of blight                                    | <input type="checkbox"/> Yes                  | <input checked="" type="checkbox"/> No | The Project site is not located in a blighted area.  |
| 14.                    | Proximity/support of regional tourism attractions/facilities          | <input type="checkbox"/> Yes                  | <input type="checkbox"/> No            | N/A  |

|     |   |   |  |   |
|-----|---|---|--|---|
| 15. | Local or County official support          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            | The Project has local and County support. |
| 16. | Building or site has historic designation | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | There is no historic designation.         |
| 17. | Provides brownfield remediation           | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | No brownfields present.                   |