

**PILOT DEVIATION APPROVAL RESOLUTION
VISTA REAL ESTATE DEVELOPMENT LLC PROJECT**

A special meeting of the Albany County Industrial Development Agency (the “Agency”) was convened in public session in Room 740 at 112 State Street in the City of Albany, Albany County, New York on February 9, 2022 at 5:30 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
Leslie Butcher	Executive Assistant
Walter J. Forman, Esq.	Agency Counsel
A. Joseph Scott, III, Esq.	Special Counsel

The following resolution was offered by Michael Paparian, seconded by Marlene McTigue, to wit:

Resolution No. 0222-____

**RESOLUTION AUTHORIZING A DEVIATION FROM THE AGENCY’S UNIFORM
TAX EXEMPTION POLICY IN CONNECTION WITH THE PROPOSED PAYMENT
IN LIEU OF TAX AGREEMENT TO BE ENTERED INTO BY THE AGENCY IN
CONNECTION WITH THE PROPOSED PROJECT FOR VISTA REAL ESTATE
DEVELOPMENT LLC (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 commercial, manufacturing 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 December, 2021, Vista Real Estate Development LLC, a New York limited liability company (the "Company"), submitted 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) (1) the acquisition of an interest in a ±26.0 acre portion of an approximately 97.37 acre parcel of land located at 125 Vista Boulevard in the Town of Bethlehem and the Town of New Scotland, each located in Albany County, New York (the "Land"), (2) the construction on the Land of the following buildings and improvements: a one-story building to contain approximately 200,000 square feet of space, a two-story building to contain approximately 50,000 square feet of space and a one-story building to contain approximately 100,000 square feet of space and associated parking (collectively, the "Facility"), and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to constitute a commercial and industrial facility to be owned by the Company and leased to Plug Power for commercial, manufacturing and warehouse space and directly and indirectly 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, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, 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 December 15, 2021 (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 (the "Public Hearing") pursuant to Section 859-a of the Act, 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 on January 7, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on January 14, 2022 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 on January 14, 2022 in the Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem, New York, (D) conducted the Public Hearing on January 27, 2022 at 7:00 o'clock p.m., local time at the Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York located at 445 Delaware Avenue, and (E) prepared a report of the Public Hearing (the "Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available 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 February 9, 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 SEQRA, and (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 Project was a “Type 1” action (as such quoted term is defined in SEQRA) but that the 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

WHEREAS, in connection with the Project, the Company has requested that the Agency deviate from its uniform tax exemption policy with respect to the terms of the proposed payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility, which proposed deviation is outlined in the letter dated January 7, 2022 (the “Pilot Deviation Letter”), a copy of which Pilot Deviation Letter is attached hereto as Exhibit A; and

WHEREAS, pursuant to Section 874(4) of the Act, prior to taking final action on such request for a deviation from the Agency’s uniform tax exemption policy, the Agency must give the chief executive officers of Albany County and each city, town, village and school district in which the Project Facility is located (collectively, the “Affected Tax Jurisdictions”) written notice of the proposed deviation from the Agency’s uniform tax exemption policy and the reasons therefor prior to the meeting of the Agency at which the members of the Agency shall consider whether to approve such proposed deviation; and

WHEREAS, on January 7, 2022, the Chairman of the Agency sent a copy of the Pilot Deviation Letter to the Affected Tax Jurisdictions to notify the Affected Tax Jurisdictions of the proposed deviation from the Agency’s uniform tax exemption policy in connection with the Project; and

WHEREAS, through the Pilot Deviation Letter, the Chairman of the Agency notified the chief executive officers of the Affected Tax Jurisdictions of the proposed deviation from the Agency’s uniform tax exemption policy and further notified said chief executive officers that the members of the Agency would consider whether to approve such proposed deviation at this meeting;

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

Section 1. The Agency hereby finds and determines as follows:

(A) The Agency has considered any and all responses from the Affected Tax Jurisdictions to the Pilot Deviation Letter.

(B) The Agency has reviewed and responded to all written comments received from any Affected Tax Jurisdiction with respect to the proposed deviation.

(C) The Agency has given all representatives from an Affected Tax Jurisdictions in attendance at this meeting the opportunity to address the members of the Agency regarding the proposed deviation.

Section 2. Based upon (A) the findings and determinations in Section 1 above, (B) any comments received at the Public Hearing, (C) input received at this meeting from the Affected Tax Jurisdictions with respect to the proposed deviation, (D) the Agency’s knowledge of the Project, (E) the recommendations of Agency staff and counsel, and (F) such further investigation of the Project and the

effect of the proposed deviation as the Agency has deemed appropriate, the Agency hereby determines to deviate from the Agency's uniform tax exemption policy with respect to the terms of the proposed payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility for the reasons set forth in the Pilot Deviation Letter. Based upon the aforementioned, the Agency hereby approves a deviation from the Agency's uniform tax exemption policy, the terms of the approved deviation to be as described in the Pilot Deviation Letter attached hereto as Exhibit A.

Section 3. Upon preparation by special counsel to the Agency of a payment in lieu of tax agreement with respect to the Project Facility reflecting the terms of this resolution (the "Payment in Lieu of Tax Agreement") and approval of same by the Chairman (or Vice Chairman) of the Agency, the Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Payment in Lieu of Tax Agreement, 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 such form as is approved by the Chairman (or Vice Chairman), the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 4. 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 Payment in Lieu of Tax Agreement, 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 Payment in Lieu of Tax Agreement binding upon the Agency.

Section 5. 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	YES
Michael Paparian	VOTING	YES
Marlene McTigue	VOTING	YES
Anton Dreslin	VOTING	YES
Paul M. Engel, Jr.	VOTING	ABSENT
Travon T. Jackson	VOTING	YES
Douglas Roether	VOTING	ABSENT

The foregoing Resolution was thereupon declared duly adopted.

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

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 February 9, 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 Issuer 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, as amended (the "2022 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 Issuer, either in person or attending remotely in accordance with the 2022 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 28th day of February, 2022.



M. T. McTee
Secretary

(SEAL)

EXHIBIT A
PILOT DEVIATION LETTER

- SEE ATTACHED -

ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY
112 State Street
Albany, New York 12207
Tel: 518-447-4841

January 7, 2022

SEE ATTACHED SCHEDULE A OF
AFFECTED TAXING ENTITIES

RE: Proposed Deviation from Uniform Tax Exemption Policy by
Albany County Industrial Development Agency in connection with its Proposed
Vista Real Estate Development LLC Project

Dear Ladies and Gentlemen:

This letter is delivered to you pursuant to Section 874(4)(c) of the General Municipal Law.

Albany County Industrial Development Agency (the "Agency") received an application (the "Application") from Vista Real Estate Development LLC (the "Company"), which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to consist of the following: (A) (1) the acquisition of an interest in a ± 26.0 acre portion of an approximately 97.37 acre parcel of land located at 125 Vista Boulevard in the Town of Bethlehem and the Town of New Scotland, each located in Albany County, New York (the "Land"), (2) the construction on the Land of the following buildings and improvements: a one-story building to contain approximately 200,000 square feet of space; a two-story building to contain approximately 50,000 square feet of space and a one-story building to contain approximately 100,000 square feet of space and associated parking (collectively, the "Facility"), and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to constitute a commercial and industrial facility to be owned by the Company and leased to Plug Power for commercial, manufacturing and warehouse space and directly and indirectly 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, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, 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.

In connection with the Application, the Company has made a request to the Agency enter into a payment in lieu of tax agreement (the "Proposed Pilot Agreement"). In connection with the consideration of the Proposed Pilot Agreement, the Agency is considering deviating from the Agency's Uniform Tax Exemption Policy (the "Policy"). Capitalized terms not otherwise defined herein are defined in the Policy.

The Proposed Pilot Agreement would not provide any abatements for any special assessments levied on the Project Facility.

The Proposed Pilot Agreement will provide that the Company be granted a twelve (12) year payment in lieu of tax agreement with respect to the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law. Under the terms of the Proposed Pilot Agreement, the Company will pay (A) a base payment equal to one hundred percent (100%) of the normal taxes due on the site of the Project (the "Base Pilot Payment"), and (B) an additional amount based on the increase in assessed value of the Project Facility (such increase in the assessed value due to the undertaking of the Project shall be referred to as the "Improvements"), such increased amount to be adjusted by the abatement as described as follows:

Pilot Year	Abatement Percentage
1	A payment equal to the lesser of \$0.01 per square foot of land and improvements or 100% abatement on improvements
2	100%
3	90%
4	80%
5	70%
6	60%
7	50%
8	40%
9	30%
10	20%
11	10%
12	0%

As noted in the table above, the abatement schedule is twelve (12) years, with Year 1 of the abatement schedule beginning in the year following the completion of the construction of the Project. Currently the construction period is estimated to be for one (1) year.

For purposes of computing the Base Pilot Payment with respect to the Project Facility, the base assessed value will be equal to the current assessed value of the Project site, as determined by the Assessor of the Town of Bethlehem.

The Policy provides that, for a facility similar to the Project Facility, (A) the payments in lieu of taxes will normally be determined as follows: a 50% abatement in real property taxes on the improvements in year one of the payment in lieu of tax agreement with a 10% per year decrease in such abatement over the term of the five year payment in lieu of tax agreement, and (B) the amount of the assessed value of the Project Facility will change as the assessed value is established annually by the Assessor of the Town of Bethlehem.

The purpose of this letter is to inform you of such Pilot Request and that the Agency is considering whether to grant the Pilot Request and to approve a Proposed Pilot Agreement conforming to the terms of the Pilot Request. The Agency expects to consider whether to approve the terms of the Proposed Pilot Agreement at its meeting scheduled for February 9, 2022 at 5:30 p.m., local time at the offices of the Agency located at 112 State Street in the City of Albany, Albany County, New York (the "Meeting"). As described

later in this letter, during the meeting on February 9, 2022, the Agency will review the terms of the Pilot Request and, based on the discussions during such meeting the terms of the Pilot Request may be modified.

In addition, under the Policy, the Agency requires project applicants to obtain the approval of any Proposed Pilot Agreement by each of the affected tax jurisdictions. In the case of the Project, that would require the Company to obtain the approval of the town boards of the Town of Bethlehem and New Scotland, along with Albany County and any involved school district. Given the large size of the Project and its significance to the Capital District, the Agency is considering not requiring the Company to obtain the consents of each of the affected tax jurisdictions to the Proposed Pilot Agreement.

The Agency is also considering a deviation from its general operating policy with respect to the undertaking of projects. Under such operating policy, 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. For example, if a proposed project is located in the City of Cohoes, the Agency would not consider granting any "financial assistance" to such project and instead direct the project applicant to apply to the City of Cohoes Industrial Development Agency. 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. However, given that the Project spans both towns, the Agency has preliminarily determined that requiring the Company to divide the Project among two industrial development agencies would cause significant inefficiencies and time delays.

The purpose of this letter is to inform you of such Pilot Request and that the Agency is considering whether to (A) deviate from its Policy regarding the Pilot Request, (B) deviate from its general operating policy with respect to the Agency's consideration of the Project, and (C) grant the Pilot Request and to approve a Proposed Pilot Agreement conforming to the terms of the Pilot Request.

In connection with the Agency's review and consideration of the Pilot Request and its review of any comments received pursuant to this letter and the Public Hearing described in the next paragraph, the actual amount of the Pilot Payments may be larger or smaller.

The Agency plans on scheduling a public hearing (the "Public Hearing") pursuant to Section 859-a of the General Municipal Law to solicit public comments on the Project and the proposed Financial Assistance, including the Proposed Pilot Agreement. The Public Hearing is currently scheduled for January 27, 2022 at 7:00 p.m., local time, at a location to be determined. The Agency will send you a notice of the Public Hearing.

The Agency expects to consider whether to approve the terms of the Proposed Pilot Agreement at its meeting currently scheduled for February 9, 2022 at 5:30 p.m., local time at the offices of the Agency located Room 740 located at 112 State Street in the City of Albany, Albany County, New York (the "Meeting"). This letter is forwarded to you for purposes of complying with Section 874 of the General Municipal Law of the State of New York, which requires a thirty (30) day notice prior to the Agency taking final action with respect to the Proposed Pilot Agreement (if said Proposed Pilot Agreement may deviate from the provisions of the Agency's Uniform Tax Exemption Policy).

The Agency considered the following factors in considering the proposed deviation:

- 1. The nature of the Project:** A one-story building to contain approximately 200,000 square feet of space, a two-story building to contain approximately 50,000 square feet of space and a one-story building to contain approximately 100,000 square feet of space and associated parking in the Towns of Bethlehem and New Scotland, New York, such improvements

to be owned by the Company and leased to Plug Power for commercial, manufacturing and warehouse space and directly and indirectly related uses.

2. The present use of the property: vacant land in the Towns of Bethlehem and New Scotland.

3. The economic condition of the area at the time of the request of the Company and the economic multiplying effect that the Project will have on the area: At the time of the filing of the Application, the economic condition of the area in which the Project Facility is to be located is generally average. The area is strategically targeted for adding commercial/retail/residential development, based on the presence of vacant or underutilized real estate.

4. The extent to which the Project will create or retain permanent, private sector jobs and the number of jobs to be created or retained and the salary range of such jobs: The Company has estimated the following as the employment impact of the Project:

- About 758 direct full-time jobs in New York State in 2022, increasing to about 1,625 direct full-time jobs in New York State by 2026
- The jobs will include Manufacturing, Warehousing, and Leadership positions
- The Average Estimate Annual Salary of the Jobs to be Created is \$57,300 per year

5. The estimated value of new tax exemptions to be provided: The estimated value of the tax exemptions are the following: approximately \$2,375,000, sales and use tax; approximately \$467,660, mortgage recording tax; and approximately \$3,959,282 real property taxes.

6. The economic impact of the Proposed Pilot Agreement on affected tax jurisdictions: The economic impact of the Proposed Pilot Agreement is positive, since the underlying value of the parcels will likely be largely unaffected and additional revenue will be generated through the Proposed Pilot Agreement. Special district taxes will be paid in addition to Pilot payments. Further, the investment in the Project Facility, and the introduction of the sustainable energy market to the area is likely to foster future economic investment.

7. The impact of the Proposed Pilot Agreement on existing and proposed businesses and economic development projects in the vicinity: The impact of the Project is a positive one on the community, as it creates additional development in the area and significant job increases. Further, the Project benefits a major local manufacturer, Plug Power, and will facilitate additional development and investment by Plug Power in the Capital District. Plug Power is a leading provider of comprehensive hydrogen fuel cell turnkey solutions, whose projects, including the GenDrive Equipment which Project Facility would be manufacturing, help other companies develop more sustainable energy practices.

8. The amount of private sector investment generated or likely to be generated by the Proposed Pilot Agreement: approximately \$59,884,781.

9. The effect of the Proposed Pilot Agreement on the environment: The Town of Bethlehem Planning Board has issued a "negative declaration" with respect to the Project.

10. **Project Timing:** It is anticipated that the Project will be accomplished in a timely fashion.

11. **The extent to which the Proposed Pilot Agreement will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services:** None anticipated

12. **Anticipated tax revenues:** Based on the Pilot Payment schedule, the Company is expected to pay approximately \$5,406,725 over a 12-year period on property that was not generating any significant tax revenues.

13. **The extent to which the Proposed Pilot Agreement will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the Project Facility is located:** The Project will provide significant benefits to the municipalities in which the Project is located in the form of increased tax/Pilot revenues. The Project will also provide the municipalities with access to a leading company in the green energy and sustainability market. This kind of connection can help foster further investment from sustainably focused companies.

The Agency will consider the Proposed Pilot Agreement (and the proposed deviation from the Agency's Uniform Tax Exemption Policy) at the Meeting. The Agency would welcome any written comments that you might have on this proposed deviation from the Agency's Uniform Tax Exemption Policy. In accordance with Section 874(4)(c) of the General Municipal Law, prior to taking final action at the Meeting, the Agency will review and respond to any written comments received from any affected tax jurisdiction with respect to the proposed deviation. The Agency will also allow any representative of any affected tax jurisdiction present at the Meeting to address the Agency regarding the proposed deviation.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact me at the above telephone number.

Sincerely yours,

/s/Hon. William Clay
Honorable William Clay
Chairman

cc: Walter J. Forman, Esq., (via e-mail)

SCHEDULE A
LIST OF AFFECTED TAXING ENTITIES

Albany County

Attention: Honorable Daniel P. McCoy,
Albany County Executive
112 State Street, Room 1200
Albany, New York 12207

Bethlehem Central School District

Attention: Jody Monroe, Superintendent
Bethlehem Central School District
700 Delaware Avenue
Delmar, New York 12054

Town of New Scotland

Attention: Douglas LaGrange, Supervisor
New Scotland Town Hall
2029 New Scotland Road
Slingerlands, New York 12159

Attention: Holly Dellenbaugh, President

Bethlehem Central School District
700 Delaware Avenue
Delmar, New York 12054

Town of Bethlehem

Attention: David VanLuven, Supervisor
Bethlehem Town Hall
445 Delaware Avenue
Delmar, New York 12054