

**RESOLUTION AUTHORIZING MODIFICATION TO BASIC DOCUMENTS
VISTA REAL ESTATE DEVELOPMENT LLC AND
PLUG POWER, INC. PROJECTS**

A regular meeting of Albany County Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at 111 Washington Avenue – Suite 100 in the City of Albany, Albany County, New York on February 4, 2026 at 4:10 o’clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Michael J. Paparian	Chairperson
Hon. Dennis Feeney	Vice Chairperson
Marlene McTigue	Secretary
William Murphy	Treasurer
Paul Nylin	Member
Hon. Wanda Willingham	Member

ABSENT:

Anton Dreslin	Assistant Secretary
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Kevin O’Connor	Chief Executive Officer
Amy Thompson	Chief Financial Officer
Antionette Dukes-Hedge	Economic Development Coordinator
Sara Paulsen	Executive Assistant
Christopher C. Canada, Esq.	Agency Counsel

The following resolution was offered by Marlene McTigue, seconded by Hon. Dennis Feeney, to wit:

Resolution No. 0226-02

**RESOLUTION AUTHORIZING THE EXECUTION BY ALBANY COUNTY
INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MODIFICATION
AGREEMENT IN CONNECTION WITH THE VISTA REAL ESTATE
DEVELOPMENT LLC AND PLUG POWER, INC. PROJECTS.**

WHEREAS, the 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 industrial, manufacturing, warehousing, commercial, research and recreation 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, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on June 7, 2022 (the “Vista Closing”), the Agency granted certain financial assistance to Vista Real Estate Development LLC, a limited liability company organized and existing under the laws of the State of New York (“Vista”), in connection with the following project (the “Vista Project”) for the benefit of Vista, 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 Vista and leased to Plug Power (as hereinafter defined) 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 “Vista Financial Assistance”); and (C) the lease of the Project Facility to Vista pursuant to the terms of a lease agreement dated as of June 1, 2022 (the “Vista Lease Agreement”) by and between the Agency and Vista; and

WHEREAS, simultaneously with the Vista Closing, among other things, (A) Vista executed and delivered to the Agency (1) a certain lease to agency dated as of June 1, 2022 (the “Vista Lease to Agency”) by and between Vista, as landlord, and the Agency, as tenant, pursuant to which Vista leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (2) a certain license agreement dated as of June 1, 2022 (the “Vista License to Agency”) by and between Vista, as licensor, and the Agency, as licensee, pursuant to which Vista granted to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Vista Project and (b) in the event of an occurrence of an Event of Default by Vista, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Vista Lease Agreement; and (3) a certain bill of sale dated as of June 1, 2022 (the “Vista Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of Vista in the Equipment, (B) Vista and the Agency executed and delivered (1) a certain payment in lieu of tax agreement dated as of June 1, 2022 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and Vista, pursuant to which Vista agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement dated as of June 1, 2022 (the “Vista Section 875 GML Recapture Agreement”) by and between Vista and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (3) a certain uniform agency project agreement dated as of June 1, 2022 (the “Vista Uniform Agency Project Agreement”) relating to the granting of the Vista Financial Assistance by the Agency to Vista, (C) the Agency filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”)

relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to Vista a sales tax exemption letter (the "Vista Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Vista Financial Assistance, and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Vista Thirty-Day Sales Tax Report") (the above enumerated documents being collectively referred to as the "Vista Basic Documents"); and

WHEREAS, on April 26, 2023 (the "Plug Power Closing," and, collectively with the Vista Closing, the "Closing"), the Agency granted certain financial assistance to Plug Power Inc., a business corporation organized and existing under the laws of the State of Delaware ("Plug Power," and, collectively with Vista, the "Company"), in connection with the following project (the "Plug Power Project," and, collectively with the Vista Project, the "Project") for the benefit of Plug Power, 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 "Plug Power Equipment") and the undertaking of various tenant and interior fit-up and other improvements (collectively, the "Improvements") (the Plug Power Equipment and the Improvements being collectively referred to as the "Plug Power Project Facility") to the Project Facility for use by Plug Power 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 "Plug Power Financial Assistance," and, collectively with the Vista Financial Assistance, the "Financial Assistance"); and (C) the lease of the Plug Power Project Facility to Plug Power pursuant to the terms of a lease agreement dated as of April 1, 2023 (the "Plug Power Lease Agreement," and, collectively with the Vista Lease Agreement, the "Lease Agreement") by and between the Agency and Plug Power; and

WHEREAS, simultaneously with the Plug Power Closing, (A) Plug Power executed and delivered to the Agency (1) a certain lease to agency dated as of April 1, 2023 (the "Plug Power Lease to Agency," and, collectively with the Vista Lease to Agency, the "Lease to Agency") by and between Plug Power, as landlord, and the Agency, as tenant, pursuant to which Plug Power leased to the Agency the Plug Power Project Facility; and (2) a certain bill of sale dated as of April 1, 2023 (the "Plug Power Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of Plug Power in the Plug Power Equipment, (B) Plug Power and the Agency executed and delivered (1) a certain recapture agreement dated as of April 1, 2023 (the "Plug Power Section 875 GML Recapture Agreement," and, collectively with the Vista Section 875 GML Recapture Agreement, the "Section 875 GML Recapture Agreement") by and between Plug Power and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes, and (2) a certain uniform agency project agreement dated as of April 1, 2023 (the "Plug Power Uniform Agency Project Agreement," and, collectively with the Vista Uniform Agency Project Agreement, the "Uniform Agency Project Agreement") by and between the Agency and Plug Power relating to the terms of the granting by the Agency of the Plug Power Financial Assistance to Plug Power, (C) the Agency executed and delivered to Plug Power a sales tax exemption letter (the "Plug Power Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (D) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Plug Power Thirty-Day Sales Tax Report") (the above enumerated documents being collectively referred to as the "Plug Power Basic Documents," and, collectively with the Vista Basic Documents, the "Basic Documents"); and

WHEREAS, in connection with the Plug Power Project, the Agency received a letter from Plug Power dated April 8, 2022 (the "2022 Request Letter") requesting that the Agency, based on discussions

between the Agency and the Company, invest \$2,000,000 in the Plug Power Project (the “Agency Investment”); and

WHEREAS, also simultaneously with the Plug Power Closing, in connection with the 2022 Request Letter, the Agency made the Agency Investment in the Plug Power Project; and

WHEREAS, pursuant to Section 3.02 of the Uniform Agency Project Agreement, the Company is required, among other things, to maintain a certain Employment Level (as defined in the Uniform Agency Project Agreement) and to file with the Agency, on an annual basis, an Annual Verification Report (as defined in the Uniform Agency Project Agreement), which Annual Verification Report sets forth, among other things, the maintenance by the Company of the Employment Level and the Company’s compliance with various other terms of the Basic Documents; and

WHEREAS, failure by the Company to maintain at least eighty percent (80%) of the Employment Level constitutes a Recapture Event under the Uniform Agency Project Agreement; and

WHEREAS, pursuant to Section 4.03(F) of the Uniform Agency Project Agreement, (A) the Agency must consider various criteria as set forth in the Agency’s “Recapture Benefits Policy” when determining whether to recapture the Financial Assistance, (B) the Company may request an opportunity to present to the Agency why a proposed recapture amount should not be paid, and (C) the Agency may take various courses of action including, but not limited to, taking no action with respect to the recapture of the Financial Assistance; and

WHEREAS, in connection with the information reported in the 2025 Report, the Chief Executive Officer and other staff of the Agency, and counsel to the Agency, engaged in various discussions with Plug Power regarding the Employment Level, the provisions of the Uniform Agency Project Agreement, and certain circumstances impacting Plug Power’s ability to maintain the Employment Level; and

WHEREAS, based on such discussions, the Agency requested representatives of Plug Power to attend the regularly scheduled meeting of the Agency held on December 10, 2025, which meeting, like all meetings of the Agency, was open to the general public. During such meeting, representatives of Plug Power made a presentation (the “Presentation”) to the members of the Agency, during which such representatives discussed various reasons why the Company would be unable to meet the Employment Level specified in the Uniform Agency Project Agreement, but highlighted other positive status updates regarding the Project including: (A) the migration of Plug Power’s corporate headquarters to the Project site, (B) the relocation of various high-level corporate officers of Plug Power to the Project site, and (C) the increase of manufacturing operations at the Project site; and

WHEREAS, following the Presentation, the members of the board of the Agency engaged in discussion with the staff of the Agency and counsel to the Agency (the “Board Review”) regarding whether any action should be taken with respect to the recapture of a portion of the Financial Assistance based on the deficiency in the Employment Level, and noted various challenges to the Company’s ability to maintain the Employment Level including, among other things, certain economic and political changes impacting the ability of renewable energy companies to operate; and

WHEREAS, on February 3, 2026, the Agency received a letter from Plug Power (the “Request Letter”), in which Plug Power (A) reiterated the information provided in the Presentation and (B) requested (the “Request”) that the Agency modify the terms of the Basic Documents to reflect the reduced Employment Level specified in the Request Letter and as summarized on Exhibit A attached hereto (collectively, the “Modification”); and

WHEREAS, (A) in connection with the Employment Level, the Agency must determine, based on the criteria set forth in Section 3 of the Agency's Recapture Benefits Policy, whether to take any action pursuant to Section 4.03(F) of the Uniform Agency Project Agreement, and (B) in connection with the Request, the Agency must determine whether to proceed with the Modification and the execution and delivery of certain documents (collectively, the "Modification Documents") in connection therewith (collectively, the "Action"); and

WHEREAS, pursuant to the Uniform Agency Project Agreement and the Agency's Recapture Benefits Policy, the Agency has examined the Project, the status thereof, the information contained in the 2025 Report, the information received during the Presentation, and the information discussed as part of the Board Review (collectively, the "Recapture Review"), and there appears to be sufficient justification to explain the deficiencies in the Employment Level; 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Action; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Action in order to make a determination as to whether the Action is subject to SEQRA, and it appears that the Action constitutes a Type II action under SEQRA;

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

Section 1. All action taken by the Chairperson, Vice Chairperson, Chief Executive Officer of the Agency, Agency Counsel, and other Agency staff with respect to the Action is hereby ratified and confirmed.

Section 2. Based upon an examination of the Action, the Agency hereby finds and determines that the Action constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(26), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Action.

Section 3. Based upon an examination of the deficiency of the Employment Level and the information reviewed as part of the Recapture Review, the Agency hereby finds and determines (A) that there appears to be satisfactory justification explaining the deficiencies, (B) that Plug Power continues to make sufficient efforts to maintain the other Community Commitments (as defined in the Plug Power Uniform Agency Project Agreement) which contribute positively to employment in general at the Project Facility and (C) based on the foregoing, to take no action with respect to the recapture of any Financial Assistance pursuant to the Uniform Agency Project Agreement.

Section 4. Based upon an examination of the Request, 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 continues to constitute a “project,” as such term is defined in the Act;

(C) Since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request;

(D) The jobs to be retained and created in connection with the Project, as reduced by the Action, remain significant;

(E) The reduction of the Employment Level will encourage and permit Plug Power to maintain operations at the Project site which 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;

(F) The Project continues to represent a major investment in the Capital District and remains consistent with local planning and development efforts; and

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

Section 5. Subject to (A) compliance with the terms and conditions contained in the Basic Documents, (B) approval of the Modification Documents by counsel to the Agency, and (C) payment by the Company of all fees and expenses of the Agency in connection with the Modification, including the fees of Agency Counsel, the Agency hereby (i) consents to the Modification and (ii) determines to enter into the Modification Documents.

Section 6. The Chairperson, Vice Chairperson and/or Chief Executive Officer of the Agency, with the assistance of Agency Counsel, is authorized to negotiate and approve the form and substance of the Modification Documents.

Section 7. The Chairperson, Vice Chairperson and/or Chief Executive Officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Modification 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 Chairperson, Vice Chairperson and/or Chief Executive Officer shall approve, the execution thereof by the Chairperson, Vice Chairperson and/or Chief Executive Officer to constitute conclusive evidence of such approval.

Section 8. 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 Modification 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 Modification Documents binding upon the Agency.

Section 9. This resolution shall take effect immediately.

[Remainder of page left blank intentionally]

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

Michael Paparian	VOTING	YES
Hon. Dennis Feeney	VOTING	YES
Marlene McTigue	VOTING	YES
William Murphy	VOTING	YES
Anton Dreslin	VOTING	ABSENT
Paul Nylin	VOTING	YES
Hon. Wanda Willingham	VOTING	YES

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]


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

I, the undersigned (Assistant) Secretary of Albany County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the resolution contained therein, held on February 4, 2026 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of such proceedings of the Agency and of such resolution set forth therein 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 Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present 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 4th day of February, 2026.



(Assistant) Secretary

(SEAL)

EXHIBIT A

EMPLOYMENT LEVEL TERMS

Year	Original Required Level	Modified Required Level
2023	Approximately 758 Full Time Equivalent Employees	No change
2024	Approximately 924 Full Time Equivalent Employees	No change
2025	Approximately 1,087 Full Time Equivalent Employees	435 Full Time Equivalent Employees
2026	Approximately 1,335 Full Time Equivalent Employees	534 Full Time Equivalent Employees
2027 and thereafter	Approximately 1,625 Full Time Equivalent Employees	650 Full Time Equivalent Employees