

**Victoria Storrs**

*Chair*

**Vacant**

*Vice Chair/ Assistant Secretary*

**Vacant**

*Secretary*

**Richard Kotlow**

*Treasurer*

**David Kidera**

*Member*

**Victor Franco**

*Member*

**Edward W. De**

**Barbieri**

*Member*

## **TOWN OF BETHLEHEM**

*Albany County - New York*

### **INDUSTRIAL DEVELOPMENT AGENCY**

445 DELAWARE AVENUE

DELMAR, NEW YORK 12054

Telephone: (518) 439-4955

Email: [info@bethlehemida.com](mailto:info@bethlehemida.com)

[www.bethlehemida.com](http://www.bethlehemida.com)

#### **Regular Meeting Agenda**

**Wednesday, August 24, 2022**

**8:00 AM**

**Town Hall Room 101**

**Livestream:**

**<https://us02web.zoom.us/j/87854212182>**

**Meeting ID: 878 5421 2182**

**One tap mobile**

**+16469313860,,87854212182# US**

**+19292056099,,87854212182# US (New York)**

**Dial by your location**

**+1 929 205 6099 US (New York)**

**Meeting ID: 878 5421 2182**

**Catherine M.**

**Hedgeman, Esq.**

*Executive Director,*

*Assistant Secretary and*

*Agency Counsel*

*518-439-4955*

**Allen F. Maikels**

*Chief Financial Officer and*

*Contracting Officer*

*518-487-4679*

**John Taylor**

*Senior Economic Developer*

*518-439-4995Ext.*

#### **I. Call to Order/Roll Call/Quorum Approval**

#### **II. Introduction of New Members (Storrs)**

#### **III. Minutes Approval Regular Meeting**

1. Bethlehem Industrial Development Agency – Regular Meeting – June 22, 2022

#### **IV. Reports of Committees**

1. Report of the Finance Committee (Storrs and Kotlow)
2. Report of the Governance Committee (Kidera)
3. Composition of committees (Storrs)

#### **V. Communications**

1. None

#### **VI. Old Business**

1. Project Updates (Hedgeman)
  - Burt Crane
  - Plug Power
2. Report of Senior Economic Developer (Taylor)

## **VII. New Business**

1. Admin and Document Retention proposal from Hedgeman Law
2. Resignations and Appointments of Agency Board Members
3. Financial Statements (Maikels)
4. Resolution to approve an Economic Development Cooperation Agreement-  
**PLUG POWER PROJECT**
5. Resolution to approve an Economic Development Cooperation Agreement-  
**CHPE**
6. Resolution to approve **EXECUTIVE DIRECTOR PERFORMANCE  
EVALUATION PROCESS**

## **VIII. Future Meetings**

Discussion (Hedgeman)

## **VIII. Adjourn**



# **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY BY-LAWS**

Pursuant to the authority contained in Section 858, Title 1 of Article 18-a of the General Municipal Law, as set out in Chapter 1030 of the Laws of 1969, and Section 909-b of the General Municipal Law, as set out in Chapter 582 of the Laws of 1973 of the State of New York, the Town of Bethlehem Industrial Development Agency hereby approves the following By-Laws for the regulation of its activities.

## **ARTICLE I**

### **NAME, SEAL**

Section 1. NAME. The name of the Agency shall be the "Town of Bethlehem Industrial Development Agency."

Section 2. SEAL. The official seal of the Agency shall be in a design circular in form bearing the words and dates as follows:

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, NEW YORK  
CORPORATE SEAL  
1980

Section 3. OFFICE. The office of the Agency shall be at 445 Delaware Avenue, Delmar, New York 12054.

## **ARTICLE II**

### **MEMBERS**

Section 1. Members. The members of the Agency shall be appointed by the Town Board of the Town of Bethlehem, and shall serve at the pleasure of the Town Board.

Section 2. Number of Members. The members of the Agency shall consist of not less than three nor more than seven members.

Section 3. Responsibility of Members. It is the policy of the Agency that board members commit themselves to acting in accordance with accepted principles of good corporate governance. Board members have a duty to be informed, knowledgeable and engaged in the activities of the Agency and to actively exercise oversight of Agency management. If a board member is unable to fulfill these commitments, it is the duty of the board member to resign from the Agency board.

## **ARTICLE III**

### **OFFICERS**

Section 1. OFFICERS. The officers of the Agency shall be a Chair, Vice-Chair, Treasurer, Secretary (each of whom shall be members), Assistant Secretary and such other officers as it may determine, who shall have such duties, powers and functions as hereinafter provided, all of whom shall be elected by the members of the Agency. Such officers shall be elected at the annual meeting of the Agency in each fiscal year.

## **ARTICLE IV**

### **TENURE OF OFFICE**

Section 1. Each officer of the Agency shall hold office for one year and each member shall continue to hold office until his successor is appointed or elected and qualifies in his stead. If the term of an Agency member should terminate, his term of office as an officer shall also terminate and at the regular meeting next succeeding such termination the members of the Agency shall elect from among their number a successor who shall serve until the next annual meeting of the Agency.

Section 2. Each member shall continue to hold office as a member until his successor is appointed or elected and qualifies in his stead.

## **ARTICLE V**

### **DUTIES OF OFFICERS**

Section 1. **CHAIRMAN**. The Chairman shall preside at all meetings of the Agency. He shall sign and execute on behalf of the Agency all contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by the Agency, and shall perform such other duties as may be prescribed for him by law or by Agency. The Chairman shall submit to the Agency such recommendations and information as he may consider proper concerning the business, affairs, and policies of the Agency.

Section 2. **SECRETARY**. The Secretary shall record all the votes and record the minutes of the Agency in a journal to be kept for that purpose; attend to the serving of notice of all meetings when required; shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all papers or other documents as may be required; shall attend to such correspondence as may be assigned; shall perform all duties as the Agency may designate.

Section 3. **TREASURER**. The treasurer shall oversee the financial management procedures and systems implemented by the Agency. This includes coordinating the financial reporting and the budgeting process with the Agency's management, committees, and the Members.

Section 4. **ADDITIONAL DUTIES**. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by the By-Laws of the Agency, or by the rules and regulations of the Agency.

Section 5. **REMOVAL, RESIGNATION, SALARY, ETC.** Any officer elected or appointed by the Agency may be removed by the Agency with or without cause. In the event of the death, resignation or removal of an officer, the Agency in its discretion may elect a successor to fill the unexpired term at the next regular meeting of the Agency. All officers who are members of the Agency shall serve without compensation.

Section 6. **ADDITIONAL PERSONNEL**. The Agency may appoint such other officers and employees including a Chief Executive Officer and a Chief Financial Officer, as the Agency may require for the performance of its duties. The Agency may also appoint Counsel and may retain and employ private consultants for professional and technical assistance and advice. The appointment duties and compensation of all personnel shall be determined by the Agency subject to the laws of the State of New York.

Section 7. BONDING OF OFFICERS. The Chairman, the Treasurer, and such other officers as the Agency may require, shall execute bonds conditioned upon the faithful performance of the duties of their offices, the amount and sufficiency of which shall be specified by the Agency and the premiums thereof shall be paid by the Agency.

## ARTICLE VI

### GENERAL PROVISIONS

Section 1. FISCAL YEAR. The fiscal year of the Agency shall begin on January 1.

Section 2. ANNUAL MEETING. The annual meeting of the Agency shall be held in February each year at the regular meeting place of the Agency in conjunction with the Regular Meeting for February.

Section 3. REGULAR MEETINGS. Regular meetings of the Agency shall take place at a time and manner approved by the Agency at its annual meeting. Regular meetings may be adjourned to any other place at the will of a majority of the members of the Agency present and voting at such meeting.

Section 4. SPECIAL MEETINGS. The Chairman of the Agency may, when he deems it desirable, and shall, upon the formal request of two members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the notice of such meeting. The notice of such meeting shall be served on each member of the Agency by delivery or mail received by each such member at least 24 hours prior to the date of such meeting. Pursuant to Section 94 of the Public Officers Law, notice of such special meeting shall be given to news media at the same time.

Section 5. EXECUTIVE SESSIONS. When determined by the Agency that any matter pending before it is confidential in nature it may, in accordance with the laws of the State of New York, establish an executive session and exclude non-members from such session.

Section 6. QUORUM. At all meetings of the Agency, a majority of the members of the Agency then in office shall constitute a quorum and the vote of a majority of the members present and voting at a meeting of the Agency shall be deemed the act of the Agency. A majority of the members present whether or not a quorum is present may adjourn any meeting to another time and place.

Section 7. ORDER OF BUSINESS. The order of business at regular meetings shall be:

- (a) Roll call. Determination of quorum.
- (b) Reading of minutes of previous meeting.
- (c) Approval of the minutes of previous meeting.
- (d) Reports of Committees.
- (e) Communications.
- (f) Unfinished business.
- (g) New business.
- (h) Adjournment.

Section 8. MANNER OF VOTING. The voting on all questions coming before the Agency shall be by the recorded vote of its members, and the yeas and nays shall be entered in the minutes of each meeting, except in the case of appointment when the vote may be by ballot.

Section 9. COMMITTEES. The Chairman, Vice Chairman and members of all committees shall be appointed by the chairman of the Agency who shall be an ex officio member of each committee. A quorum

of any committee shall consist of a majority of members of that committee.

Section 10. EXECUTION OF INSTRUMENTS. All Agency instruments and documents shall be signed or countersigned, executed, verified or acknowledged by such officer or officials or other person or persons as provided in these By-Laws or as the Agency may from time to time designate.

## **ARTICLE VII**

### **AMENDMENTS**

Section 1. AMENDMENTS TO BY-LAWS. The By-Laws of the Agency shall be amended only with the approval of at least a majority of all of the members of the Agency at a regular or a special meeting, but no such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all members of the Agency.

# **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY AUDIT COMMITTEE CHARTER**

## **AUTHORITY and PURPOSE**

The Members of the Town of Bethlehem Industrial Development Agency ("Agency") established the Audit Committee (the "Committee") to assist the Members of the Agency in audit matters, including:

- Recommending to the Members the hiring of a certified independent accounting firm for the Agency;
- Establishing the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes.
- Fulfilling the responsibilities for oversight of the financial reporting process and the system of risk assessment and internal controls over financial reporting.

## **COMMITTEE MEMBERSHIP**

The Committee shall consist of at least three members and shall be appointed, and may be replaced, by the Agency. All members of the Committee shall meet the independence standards as specified in the Public Authority Accountability Act of 2005 ("PAAA") and, to the extent practicable, should be familiar with corporate financial and accounting practices.

## **MEETINGS**

The Committee shall meet as often as necessary to carry out its responsibilities. The Chairman of the Committee shall report on any Committee meetings held at the next regularly scheduled Agency meeting following the Committee meeting.

## **POWERS AND RESPONSIBILITIES**

The Committee shall have the power and responsibility to:

### **Independent Auditors and Financial Statements**

- Appoint, compensate, and oversee the work of any certified independent public accounting firm employed by the Agency;
- Establish procedures for the engagement of the independent auditor to provide permitted audit services.
- Review and approve the report on the Agency's audited financial statements, associated management letter, report on internal control over financial reporting and on compliance and other matters and all other auditor communication.
- Review significant accounting and reporting issues, including complex or unusual transactions and management decisions, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.



- Review and discuss any significant risks reported in the independent audit findings and recommendations, and assess the responsiveness and timeliness of management's follow-up activities pertaining to the same.

#### Special Investigations

- Conduct or authorize investigations into any matters within its scope of responsibility;
- Seek any information it requires from Agency employees, all of whom should be directed by the Members to cooperate with Committee requests;
- Meet with Agency staff, independent auditors or outside counsel, as necessary;
- Retain, at the Agency's expense, such outside counsel, experts and other advisors as the Audit Committee may deem appropriate.

### **REQUIREMENTS FOR CERTIFIED INDEPENDENT PUBLIC ACCOUNTING FIRM**

Each certified independent public accounting firm that performs any audit for the Agency shall timely report to the Committee: (a) all critical accounting policies and practices to be used; (b) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Agency, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (c) other material written communications between the certified independent public accounting firm and the management of the Agency, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

The certified independent public accounting firm providing the Agency's annual independent audit will be prohibited in providing audit services to the Agency if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for the Agency in each of the five previous fiscal years of the Agency.

The certified independent public accounting firm performing the Agency's audit shall be prohibited from performing any non-audit services to the Agency contemporaneously with the audit, unless receiving previous written approval by the Committee including: (a) bookkeeping or other services related to the accounting records or financial statements of the Agency; (b) financial information systems design and implementation; (c) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (d) actuarial services; (e) internal audit outsourcing services; (f) management functions or human services; (g) broker or dealer, investment advisor, or investment banking services; and (h) legal services and expert services unrelated to the audit.

It shall be prohibited for any certified independent public accounting firm to perform for the Agency any audit service if the chief executive officer, comptroller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for the Agency, was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Agency during the one year period preceding the date of the initiation of the audit.

### **ANNUAL REVIEW**

The Committee shall review this Charter annually and recommend any proposed changes to the Agency for approval.

# **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY FINANCE COMMITTEE CHARTER**

## **Purpose**

The members of the Town of Bethlehem Industrial Development Agency (“Agency”) established the Finance Committee to oversee the Agency's debt and debt practices and to recommend policies concerning the Agency’s issuance and management of debt.

## **Duties of the Finance Committee**

It shall be the responsibility of the Finance Committee to:

- Review proposals for the issuance of debt by the Agency and to make recommendations concerning those proposals to the board.
- Make recommendations to the board concerning the level of debt and nature of debt issued by the Agency.
- Make recommendations concerning the appointment and compensation of bond counsel, investment advisors and underwriting firms used by the Agency, and to oversee the work performed by these individuals and firms on behalf of the Agency.
- Review the Agency's proposed annual operating budget as presented by Agency management for the upcoming fiscal year and recommend the annual budget to the board for approval after incorporating necessary amendments and on an ongoing basis review and recommend changes as needed.
- Meet with and request information from Agency staff, independent auditors and advisors or outside counsel, as necessary to perform the duties of the committee.
- Retain, at the Agency’s expense, such outside counsel, experts and other advisors as the Finance Committee may deem appropriate.
- Review proposals relating to the repayment of debt or other long-term financing arrangements by the Agency and its subsidiaries.
- Undertake such other responsibilities as may be requested by the Agency's board.

## **Composition of Committee and Selection of Members**

The Finance Committee shall consist of not less than three independent members of the board of directors, who shall constitute a majority on the committee. If the board has less than three independent members, non-independent members may be appointed to the committee provided that the independent members constitute a majority of the committee. The Agency’s board shall appoint the Finance Committee members and the Finance Committee chair. Members shall serve on the committee at the discretion of the board. Members appointed to the committee shall have the background necessary to perform its duties.

## **Meetings**

The Finance Committee shall meet at such times as deemed advisable by the chair, but not less than twice a year. The committee must meet prior to any debt issuance planned to be undertaken by the Agency.

Members of the Finance Committee are expected to attend each committee meeting, in person or via telephone or videoconference. The Finance Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary. A majority of the committee members present or participating through telephone or videoconference shall constitute a quorum.

Meeting agendas shall be prepared prior to every meeting and provided to Finance Committee members along with briefing materials five (5) business days before the scheduled Finance Committee meeting. The Finance Committee may act only on the affirmative vote of a majority of the members or by unanimous consent. Minutes of these meetings shall be recorded.

A report of the committee's meeting shall be prepared and presented to the board at its next scheduled meeting following the meeting of the committee.

Meetings of the committee are open to the public, and the committee shall be governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice and the conduct of executive session.

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# **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY GOVERNANCE COMMITTEE CHARTER**

## **AUTHORITY and PURPOSE**

The Members of the Town of Bethlehem Industrial Development Agency ("Agency") established the Governance Committee (the "Committee") to assist the Members of the Agency in governance matters, including:

- keeping the board and staff informed of current best governance practices;
- reviewing corporate governance trends;
- updating the agency's corporate governance principles;
- advising appointing authorities on the skills and experiences required of potential board members;
- encouraging and enabling training of new Members and staff of the Agency.

## **COMMITTEE MEMBERSHIP**

The Committee members shall be appointed, and may be replaced, by the Agency. All members of the Committee shall meet the independence standards as specified in the Public Authority Accountability Act of 2005 ("PAAA").

## **MEETINGS**

The Committee shall meet as often as necessary to carry out its responsibilities. The Chairman of Committee shall report on any Committee meetings held at the next regularly scheduled Agency meeting following the Committee meeting.

## **QUALIFICATIONS FOR MEMBERS OF THE AGENCY**

The Committee recommends that, in reviewing nominees for membership in the Agency, the Town Board consider qualifications which include personal and professional integrity, good independent business judgment, demonstrated commitment to the community, and relevant experience and skills which will enable the Agency to carry out its mission of enhancing economic development in the Town. The overall membership of the Agency should include individuals with experience and skills in public and private finance, economic development, business management, public policy, and other areas the Town Board considers relevant.

## **ANNUAL REVIEW**

The Committee shall review this Charter annually and recommend any proposed changes to the Agency for approval.

# Gender Neutral Policy Revisions

# **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY AUDIT COMMITTEE CHARTER**

## **AUTHORITY and PURPOSE**

The Members of the Town of Bethlehem Industrial Development Agency ("Agency") established the Audit Committee (the "Committee") to assist the Members of the Agency in audit matters, including:

- Recommending to the Members the hiring of an independent accounting firm for the Agency.
- Establishing the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes.
- Fulfilling the responsibilities for oversight of the financial reporting process and the system of risk assessment and internal controls over financial reporting.

## **COMMITTEE MEMBERSHIP**

The Committee shall consist of at least three members and shall be appointed, and may be replaced, by the Agency. All members of the Committee shall meet the independence standards as specified in the Public Authority Accountability Act of 2005 ("PAAA") and, to the extent practicable, should be familiar with corporate financial and accounting practices.

## **MEETINGS**

The Committee shall meet as often as necessary to carry out its responsibilities. The Chair of the Committee shall report on any Committee meetings held at the next regularly scheduled Agency meeting following the Committee meeting.

- The Audit Committee should meet at least twice annually; once with the independent auditor prior to the start of the audit and once at the conclusion of the audit,
- The Audit Committee must meet with the independent auditor at least once annually to discuss the financial statements of the Agency.
- Agendas for Audit Committee meetings should be prepared and distributed well in advance of each scheduled meeting, and minutes of each meeting should be prepared and distributed for review by the full Board during the Board's regularly scheduled meeting.

## **POWERS AND RESPONSIBILITIES**

The Committee shall have the power and responsibility to:

### Independent Auditors and Financial Statements

- Compensate and oversee the work of any independent public accounting firm employed by the Agency.
- Establish procedures for the engagement of the independent auditor to provide permitted audit services.
- Review and approve the report on the Agency's audited financial statements, associated management letter, report on internal control over financial reporting and on compliance and other matters and all other auditor communication.

- Review significant accounting and reporting issues, including complex or unusual transactions and management decisions, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.
- Review and discuss any significant risks reported in the independent audit findings and recommendations and assess the responsiveness and timeliness of management's follow-up activities pertaining to the same.

### Internal Audits

The Audit Committee should be contacted by any interested party regarding any possible improprieties, weaknesses or issues with any of the Agency's operating policies, procedures or internal controls. Contact information for the chair of the Audit committee is available on the BIDA website.

If the Agency determines that an internal audit is appropriate, the Audit Committee has the following responsibilities relative to the internal audit:

- Determine the scope of the Internal Audit, review with management the Agency's policies, procedures, management practices, staffing and organizational structure.
- Ensure the independence of the internal audit.
- Review the results of internal audit and approve procedures for implementing accepted recommendations of the internal auditor.

### Special Investigations

- Conduct or authorize investigations into any matters within its scope of responsibility;
- Seek any information it requires from Agency employees, all of whom should be directed by the Members to cooperate with Committee requests;
- Meet with Agency staff, independent auditors or outside counsel, as necessary;
- Retain, at the Agency's expense, such outside counsel, experts and other advisors as the Audit Committee may deem appropriate.

## **REQUIREMENTS FOR INDEPENDENT PUBLIC ACCOUNTING FIRM**

Each independent public accounting firm that performs any audit for the Agency shall timely report to the Committee: (a) all critical accounting policies and practices to be used; (b) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Agency, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent public accounting firm; and (c) other material written communications between the independent public accounting firm and the management of the Agency, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

The independent public accounting firm providing the Agency's annual independent audit will be prohibited in providing audit services to the Agency if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for the Agency in each of the five previous fiscal years of the Agency.

The independent public accounting firm performing the Agency's audit shall be prohibited from performing any non-audit services to the Agency contemporaneously with the audit, unless receiving previous written approval by the Committee including: (a) bookkeeping or other services related to the accounting records or financial statements of the Agency; (b) financial information systems design and implementation; (c) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (d)

actuarial services; (e) internal audit outsourcing services; (f) management functions or human services; (g) broker or dealer, investment advisor, or investment banking services; and (h) legal services and expert services unrelated to the audit.

It shall be prohibited for any independent public accounting firm to perform for the Agency any audit service if the chief executive officer, comptroller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for the Agency, was employed by that independent public accounting firm and participated in any capacity in the audit of the Agency during the one year period preceding the date of the initiation of the audit.

The Agency may retain an independent audit firm for more than five years, but the firm must change the lead partner on the audit or the partner responsible for reviewing the audit at least once every five years.

## **ANNUAL REVIEW**

The Committee shall review this Charter annually and recommend any proposed changes to the Agency for approval.



# **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY GOVERNANCE COMMITTEE CHARTER**

## **AUTHORITY and PURPOSE**

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- encouraging and enabling training of new Members and staff of the Agency.

## **COMMITTEE MEMBERSHIP**

The Committee members shall be appointed, and may be replaced, by the Agency. All members of the Committee shall meet the independence standards as specified in the Public Authority Accountability Act of 2005 ("PAAA").

## **MEETINGS**

The Committee shall meet as often as necessary to carry out its responsibilities. The Chair of Committee shall report on any Committee meetings held at the next regularly scheduled Agency meeting following the Committee meeting.

## **QUALIFICATIONS FOR MEMBERS OF THE AGENCY**

The Committee recommends that, in reviewing nominees for membership in the Agency, the Town Board consider qualifications which include: an understanding of the legal, ethical and fiduciary responsibilities of membership on the Agency, personal and professional integrity, good independent business judgment, demonstrated commitment to the community, and relevant experience and skills which will enable the Agency to carry out its mission of enhancing economic development in the Town. The overall membership of the Agency should include a mix of individuals with experience and skills in public and private finance, economic development, business management, public policy, and other areas the Town Board considers relevant.

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# **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY BY-LAWS**

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Section 3. Responsibility of Members. It is the policy of the Agency that board members commit themselves to acting in accordance with accepted principles of good corporate governance. Board members have a duty to be informed, knowledgeable and engaged in the activities of the Agency and to actively exercise oversight of Agency management. If a board member is unable to fulfill these commitments, it is the duty of the board member to resign from the Agency board.

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Section 1. OFFICERS. The officers of the Agency shall be a Chair, Vice-Chair, Treasurer, Secretary (each of whom shall be members), Assistant Secretary and such other officers as it may determine, who shall have such duties, powers and functions as hereinafter provided, all of whom shall be elected by the members of the Agency. Such officers shall be elected at the annual meeting of the Agency in each fiscal year.

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### **TENURE OF OFFICE**

Section 1. Each officer of the Agency shall hold office for one year and each member shall continue to hold office until a successor is appointed or elected and qualifies in their stead. If the term of an Agency member should terminate, the member's term of office as an officer shall also terminate and at the regular meeting next succeeding such termination the members of the Agency shall elect from among their number a successor who shall serve until the next annual meeting of the Agency.

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Section 1. CHAIRMAN. The Chair shall preside at all meetings of the Agency. They shall sign and execute on behalf of the Agency all contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by the Agency, and shall perform such other duties as may be prescribed by law or by Agency. The Chair shall submit to the Agency such recommendations and information as may be considered proper concerning the business, affairs, and policies of the Agency.

Section 2. SECRETARY. The Secretary shall record all the votes and record the minutes of the Agency in a journal to be kept for that purpose; attend to the serving of notice of all meetings when required; shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all papers or other documents as may be required; shall attend to such correspondence as may be assigned; shall perform all duties as the Agency may designate.

Section 3. TREASURER. The treasurer shall oversee the financial management procedures and systems implemented by the Agency. This includes coordinating the financial reporting and the budgeting process with the Agency's management, committees, and the Members.

Section 4. ADDITIONAL DUTIES. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by the By-Laws of the Agency, or by the rules and regulations of the Agency.

Section 5. REMOVAL, RESIGNATION, SALARY, ETC. Any officer elected or appointed by the Agency may be removed by the Agency with or without cause. In the event of the death, resignation or

removal of an officer, the Agency in its discretion may elect a successor to fill the unexpired term at the next regular meeting of the Agency. All officers who are members of the Agency shall serve without compensation.

Section 6. ADDITIONAL PERSONNEL. The Agency may appoint such other officers and employees including a Chief Executive Officer and a Chief Financial Officer, as the Agency may require for the performance of its duties. The Agency may also appoint Counsel and may retain and employ private consultants for professional and technical assistance and advice. The appointment duties and compensation of all personnel shall be determined by the Agency subject to the laws of the State of New York.

Section 7. BONDING OF OFFICERS. The Chair, the Treasurer, and such other officers as the Agency may require, shall execute bonds conditioned upon the faithful performance of the duties of their offices, the amount and sufficiency of which shall be specified by the Agency and the premiums thereof shall be paid by the Agency.

## **ARTICLE VI**

### **GENERAL PROVISIONS**

Section 1. FISCAL YEAR. The fiscal year of the Agency shall begin on January 1.

Section 2. ANNUAL MEETING. The annual meeting of the Agency shall be held in February each year at the regular meeting place of the Agency in conjunction with the Regular Meeting for February.

Section 3. REGULAR MEETINGS. Regular meetings of the Agency shall take place at a time and manner approved by the Agency at its annual meeting. Regular meetings may be adjourned to any other place at the will of a majority of the members of the Agency present and voting at such meeting.

Section 4. SPECIAL MEETINGS. The Chair of the Agency may, when he deems it desirable, and shall, upon the formal request of two members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the notice of such meeting. The notice of such meeting shall be served on each member of the Agency by delivery or mail received by each such member at least 24 hours prior to the date of such meeting. Pursuant to Section 94 of the Public Officers Law, notice of such special meeting shall be given to news media at the same time.

Section 5. EXECUTIVE SESSIONS. When determined by the Agency that any matter pending before it is confidential in nature it may, in accordance with the laws of the State of New York, establish an executive session and exclude non-members from such session.

Section 6. QUORUM. At all meetings of the Agency, a majority of the members of the Agency then in office shall constitute a quorum and the vote of a majority of the members present and voting at a meeting of the Agency shall be deemed the act of the Agency. A majority of the members present whether or not a quorum is present may adjourn any meeting to another time and place.

Section 7. ORDER OF BUSINESS. The order of business at regular meetings shall be:

- (a) Roll call. Determination of quorum.
- (b) Reading of minutes of previous meeting.
- (c) Approval of the minutes of previous meeting.
- (d) Reports of Committees.

- (e) Communications.
- (f) Unfinished business.
- (g) New business.
- (h) Adjournment.

Section 8. MANNER OF VOTING. The voting on all questions coming before the Agency shall be by the recorded vote of its members, and the yeas and nays shall be entered in the minutes of each meeting, except in the case of appointment when the vote may be by ballot.

Section 9. COMMITTEES. The Chair, Vice Chair and members of all committees shall be appointed by the chair of the Agency who shall be an ex officio member of each committee. A quorum of any committee shall consist of a majority of members of that committee.

Section 10. EXECUTION OF INSTRUMENTS. All Agency instruments and documents shall be signed or countersigned, executed, verified or acknowledged by such officer or officials or other person or persons as provided in these By-Laws or as the Agency may from time to time designate.

## **ARTICLE VII**

### AMENDMENTS

Section 1. AMENDMENTS TO BY-LAWS. The By-Laws of the Agency shall be amended only with the approval of at least a majority of all of the members of the Agency at a regular or a special meeting, but no such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all members of the Agency.

## **TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY ETHICS POLICY**

This Code of Ethics applies to both the members and the employees of Town of Bethlehem Industrial Development Agency (the “Agency”). The purpose of this Code of Ethics is to promote honest and ethical conduct and compliance with the law.

1. Definition. As used in this section: The term “Agency” shall mean the Town of Bethlehem Industrial Development Agency.

The term “employee” shall mean any employee of the Town of Bethlehem Industrial Development Agency.

2. Rule with respect to conflicts of interest. No member or employee of the Agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No member or employee of the Agency should accept other employment which will impair their independence of judgment in the exercise of their official duties.

b. No member or employee of the Agency should accept employment or engage in any business or professional activity which will require them to disclose confidential information which they have gained by reason of their official position or authority.

c. No member or employee of the Agency should disclose confidential information acquired by them in the course of their official duties nor use such information to further their personal interests.

d. No member or employee of the Agency should use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others.

e. No member or employee of the Agency should engage in any transaction as representative or agent of the Agency with any business entity in which they have a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of their official duties.

f. A member or employee of the Agency should not by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position or influence of any party or person.

g. A member or employee of the Agency should abstain from making personal investments in enterprises which they have reason to believe may be directly

involved in decisions to be made by them or which will otherwise create substantial conflict between their duty in the public interest and their private interest.

h. A member or employee of the Agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their trust.

i. No member or employee of the Agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the Agency.

j. If any officer or employee of the Agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to receiving benefits from the Agency, they should file with the members of the Agency a written statement that they have such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

**TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
OPEN MEETINGS LAW**

SECTION 1401. PURPOSE AND AUTHORITY. Pursuant to the Open Meetings Law, being Article 7 of the Public Officers Law (the “Open Meetings Law”), every meeting of a public body must be open to the general public, with certain limited exceptions. The purpose of this Part is to establish procedures for the implementation of the Open Meetings Law.

SECTION 1402. DEFINITIONS. Except as otherwise provided herein, the definitions contained in Section 102 of the Open Meetings Law apply to this Part. As used in this Part:

(A) “Meeting” mean the official convening of the Agency or any committee or other body consisting of Agency members (or consisting of members of the general public formally created by the Agency to advise the Agency or conduct business on behalf of the Agency) for the purpose of conducting public business.

(B) “Executive Session” means that portion of a meeting not open to the general public.

SECTION 1403. CONDUCT OF MEETINGS. (A) Open Meetings. In compliance with the Open Meetings Law, every meeting shall be open to the general public, except that an executive session may be called and business conducted thereat in accordance with subsection (B) hereof.

(B) Executive Sessions. Upon a majority vote of the Agency, or the members of the committee or other body thereof, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a meeting may be conducted as an executive session for the purposes specified in Section 105 of the Open Meetings Law. The Agency or the members of the subcommittee or other body may permit any person to attend an executive session.

(C) Public Participation. The Agency member or other person presiding over a meeting may permit public participation upon such terms as they shall deem just and proper.

(D) Recording Devices. Use of sonic recording devices at Agency meetings is permitted, subject to reasonable conditions.

SECTION 1404. PUBLIC NOTICE. (A) Notice. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in the main office of the Agency at least seventy-two (72) hours before such meeting. Public notice of the time and place of every other meeting shall be given in the same manner as soon as possible prior thereto. The foregoing notice provisions shall not be construed to require publication of a legal notice or any other notice.

(B) Proof of Notice. On the date when the notice is given as aforesaid, the Executive Director of the Agency shall cause a certificate or affidavit regarding the giving of such notice to be prepared, and shall cause a copy of said certificate and of the notice of such meeting to be placed in the minute books of the Agency.



SECTION 1405. MINUTES. (A) Open Meetings. Minutes shall be taken at all open meetings, which shall consist, at a minimum, of a record or summary of all motions, proposal, resolutions and any other matters formally voted upon, and the votes thereon.

(B) Executive Sessions. Minutes shall be taken at executive sessions of any action taken by formal vote, which shall consist, at a minimum, of a record summary of the final determination of such action, and the date and vote thereon. Such minutes need not include any matter not required to be made public by Article 6 of the Public Officers Law (the “Freedom of Information Law”) and Part 13 (Access To Agency Records) of the rules and regulations of the Agency.

(C) Minute Books. A copy of the minutes for each meeting or executive session shall be kept by the Executive Director of the Agency in the minute books of the Agency in the principal office at the Agency.

(D) Date of Availability. Minutes of meetings shall be available to the public in accordance with the Freedom of Information Law and Part 13 (Access to Agency Records) of the rules and regulations of the Agency within two weeks of the date of the meeting. Minutes taken at executive sessions shall be available to the public within one week from the date of the executive session.

SECTION 1406. EXEMPTIONS. No provision herein shall extend to any matter made confidential by federal or state law.

**TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
TRAVEL POLICY - AGENCY MEMBERS**

It is the policy of the Agency that uniform procedures will be followed for the authorization and expenditure of funds for travel associated with Agency's business.

- Expenses incurred by the Agency Board Members, to be reimbursed from the Agency's funds, must be approved in advance by the Board Chair. The Chair will advise the Executive Director of all requests received.
- All requests for reimbursement for the Chair must be approved by the members of the Agency.
- The Chair will inform the Executive Director or their designee of all Board Member pre-approved expenses.
- The Executive Director or their designee will assist the Board Member, if desired, with arrangements for travel and the accompanying reimbursement procedures.



HEDGEMAN LAW FIRM

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PO Box 177, Slingerlands, New York 12159 | 518-573-3108  
www.HedgemanLaw.com | cmh@hedgemanlaw.com

### **Proposal for Additional Administrative Services**

At the request of the Bethlehem Industrial Development Agency Chair, Hedgeman Law Firm proposes the following amendment to the Retainer for Legal Services to include Administrative and Document Retention services support to the Bethlehem Industrial Development Agency.

Proposed billing rate:

- Legal Administrative Assistant: \$75.00 per hour
- 7 hours a month (\$525/month)

This proposal includes Agenda preparation; Agenda posting, meeting attendance and drafting of meeting minutes.

### **ANCILLARY COSTS**

We pass along out-of-pocket costs and charges that we incur on our Clients' behalf. Document reproduction (\$0.15/page for black and white, \$0.30 for color), black and white scanning (\$0.15/page).

### **Proposal for Document Retention Services**

The Agency will be brought into compliance with Authorities Budget Office requirements and guidelines for document retention and website posting, including both past and future documents. This project needs paralegal and attorney review of all documents. The paralegal has specialized knowledge to identify important documents pertinent to the IDA and for compliance with ABO requirements. All documents going forward will be maintained electronically in the cloud and also in paper as a backup. This work is important because we may be presented with Freedom of Information Act requests (FOIL) and will need to know what documents are available and where they are stored.

Proposed billing rate:

- Paralegal Assistant: \$95.00 per hour

This project has three phases:

- I. Review and purge/scan paper files- 15 hours  
Create Project paper files for all projects – 20 Hours  
Update Current website for ABO compliance- 5-7 hours  
Approx. \$3,990.00
- II. Set up filing system and folders for ABO compliance – 25 Hours  
Approx. \$2,375
- III. Ongoing file creation and maintenance- 10 hours a month or less  
Approx. \$950

#### **ANCILLARY COSTS**

We pass along out-of-pocket costs and charges that we incur on our Clients' behalf. Document reproduction (\$0.15/page for black and white, \$0.30 for color), black and white scanning (\$0.15/page).

With regard to supplies, including but not limited to file folders, labels and binders, all will be billed at cost. We anticipate a supply cost of approximately \$1000.

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF NET ASSETS  
June 30, 2022

ASSETS	June 30,2022
Current Assets	
Checking/Savings	
200.04 Cash-M&T Bank Agency Account	431,666.51
Total Checking/Savings	431,666.51
Other Current Assets	
380 Fee Receivable	137,211.95
480 Prepaid Expense	1,385.01
Total Other Current Assets	138,596.96
Total Current Assets	570,263.47
<b>TOTAL ASSETS</b>	<b>570,263.47</b>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
601 Accrued Expenses	5,185.04
Total Current Liabilites	5,185.04
Total Liabilities	5,185.04
Equity	
924 Net Assets	
924.3 Net Assets-Unassigned	565,078.43
Total 924 Net Assets	565,078.43
Total Equity	565,078.43
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>570,263.47</b>

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF REVENUE AND EXPENSES  
June 30, 2022

ORDINARY INCOME/EXPENSE

Income

2116 FEE INCOME 160,955.30

2116.1 PSEG ENERGY REIMB 31,204.74

Total Income 192,160.04

Expenses

6460.4 Contractual Expenses 62,651.50

6460.5 Business & Economic Development 4,000.00

Total Expenses 66,651.50

NET ORDINARY INCOME 125,508.54

Other Income/Expense

Other Income

2401 Interest Income 21.40

Total Other Income 21.40

NET INCOME 125,529.94

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
BUDGET VS ACTUAL  
June 30, 2022

Ordinary Income/Expense	Jun-22	YTD Budget	Variance	Annual Budget
Income				
2116 Fee Income	160,955.30	26,372.00	134,583.30	52,744.00
2106.1 PSEG Energy Reimb	31,204.74	35,000.00	-3,795.26	70,000.00
Total Income	192,160.04	61,372.00	130,788.04	122,744.00
Expenses				
6460.4 Contractual Expenses	62,651.50	59,030.00	3,621.50	118,060.00
6460.5 Business and Economic Dev	4,000.00	1,000.00	3,000.00	2,000.00
Total Expenses	66,651.50	60,030.00	6,621.50	120,060.00
Net Ordinary Income	125,508.54	1,342.00	124,166.54	2,684.00
Other Income/Expense				
2401 Interest Income	21.40	150.00	128.60	300.00
Total Other Income	21.40	150.00	128.60	300.00
Net Income	125,529.94	1,492.00	124,037.94	2,984.00

**RESOLUTION AUTHORIZING  
ECONOMIC DEVELOPMENT COOPERATION AGREEMENT**

A regular meeting of Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on July 27, 2022, at 8:00 o’clock, a.m., local time.

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

**PRESENT:**

Victoria Storrs	Chair
Tim Maniccia	Secretary
Richard Kotlow	Treasurer
David Kidera	Member
Chris Bub	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Catherine Hedgeman, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
Robert Leslie	Director, Department of Economic Development & Planning
John Taylor	Senior Economic Developer
A. Joseph Scott, III, Esq.	Agency Bond/Special Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. 0722-\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN  
ECONOMIC DEVELOPMENT COOPERATION AGREEMENT WITH THE  
ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY WITH RESPECT TO  
THE PLUG POWER INC. PROJECT.**

WHEREAS, Town of Bethlehem 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 582 of the 1973 Laws of New York, as amended, constituting Section 909-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, 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, under the Act, to accomplish its stated purposes, the Agency is further authorized to enter into contracts and agreements; and

WHEREAS in March, 2022, Plug Power Inc. (the “Company”), a business corporation duly organized and validly existing under the laws of the State of Delaware, submitted an application (the “Application”) to Albany County Industrial Development Agency (the “County Agency”), which Application requested that the County Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include 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 County Agency; and

WHEREAS, the County Agency has a general operating policy (the “Operating Policy”) with respect to the undertaking of its projects, under which the County 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 Town of Bethlehem, and such town has its own industrial development agency, and (B) in connection with the Application, the Company made a request to the County Agency (the “County Agency Request”) that the County Agency deviate from the Operating Policy with respect to the Project Facility; and

WHEREAS, by resolution adopted by the members of the County Agency on April 13, 2022 (the “Approving Resolution”), the County Agency determined (A) to grant the Financial Assistance and to enter into a lease agreement dated as of August 1, 2022 (the “Lease Agreement”) between the County Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”), and (B) to deviate from its Operating Policy with respect to deferring to local industrial development agencies, here the Agency; and

WHEREAS, the County Agency and the Agency have had discussions regarding the mutual cooperation of the County Agency and the Agency with respect to the Project and the County Agency’s deviation from its Operating Policy; and

WHEREAS, pursuant to the County Agency’s administrative fee policy (the “Fee Policy”) the County Agency will charge an administrative fee (the “Administrative Fee”) in connection with the Project; and

WHEREAS, in connection with the County Agency's deviation from its Operating Policy and the discussions with the Agency, the County Agency is willing to provide the Agency with a portion of the Administrative Fee pursuant to a proposed economic development cooperation agreement by and between the County Agency and the Agency (the "Economic Development Cooperation Agreement"); and

WHEREAS, the sharing of the Administrative Fee between the County Agency and the Agency pursuant to the Economic Development Cooperation Agreement is for a proper purpose, to wit, to facilitate cooperation between the County Agency and the Agency in order to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency desire to consider entering into the Economic Development Cooperation Agreement; and

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

Section 1. The Agency has reviewed the Economic Development Cooperation Agreement and the terms of the proposed sharing of the Administrative Fee and the Agency hereby makes the following findings and determinations with respect to the Economic Development Cooperation Agreement:

(A) The Economic Development Cooperation Agreement outlines a procedure for cooperation between the Agency and the County Agency with respect to the undertaking of the Project; and

(B) It is desirable and in the public interest for the Agency to enter into the Economic Development Cooperation Agreement.

Section 2. The members of the Agency hereby approve the execution and delivery by the Agency of the Economic Development Cooperation Agreement with the County Agency and hereby direct the Chair of the Agency and the Agency Counsel to take all steps to implement the provisions of the Economic Development Cooperation Agreement.

Section 3. 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 Economic Development Cooperation 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 Economic Development Cooperation Agreement.

Section 4. 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:

Victoria Storrs	VOTING	_____
Tim Maniccia	VOTING	_____
Richard Kotlow	VOTING	_____
David Kidera	VOTING	_____
Chris Bub	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of Town of Bethlehem 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 July 27, 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 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 \_\_\_\_ day of July, 2022.

---

Secretary

(S E A L)

DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: AUGUST 18, 2022

---

ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT AGENCY

---

ECONOMIC DEVELOPMENT COOPERATION AGREEMENT

---

RELATING TO THE  
PLUG POWER INC. PROJECT

---

DATED AS OF SEPTEMBER 1, 2022

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(This Table of Contents is not a part of the Economic Development Cooperation Agreement and is only for convenience of reference.)

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## ECONOMIC DEVELOPMENT COOPERATION AGREEMENT

THIS ECONOMIC DEVELOPMENT COOPERATION AGREEMENT (the “Agreement”) dated as of September 1, 2022 by and between the ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “County Agency”), having an office at 112 State Street, Albany, New York 12207 and the TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY (the “Town Agency,” and collectively with the County Agency, the “Agencies”), having an office at 445 Delaware Avenue, Delmar, New York 12054.

### WITNESSETH:

WHEREAS, the Agencies are 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 (1) the County Agency is further authorized and empowered by Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law, and (2) the Town Agency is further authorized and empowered by Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapters 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 their stated purposes, the Agencies are 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, under the Act, to accomplish their stated purposes, the Agencies are each authorized to enter into contracts and agreements; 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, the County Agency has a general operating policy (the "Operating Policy") with respect to the undertaking of its projects, under which the County 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 Town of Bethlehem, and such town has its own industrial development agency, and (B) in connection with the Application, the Company made a request to the County Agency (the "County Agency Request") that the County Agency deviate from the Operating Policy with respect to the Project Facility; and

WHEREAS, by resolution adopted by the members of the County Agency on April 19, 2022 (the "Approving Resolution"), the County Agency determined (a) to grant the Financial Assistance and to enter into a lease agreement dated as of September 1, 2022 (the "Lease Agreement") between the County Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"), and (b) to deviate from its Operating Policy with respect to deferring to local industrial development agencies, here the Town Agency; and

WHEREAS, the County Agency and the Town Agency have had discussions regarding the mutual cooperation of the County Agency and the Town Agency with respect to the Project and the County Agency's deviation from its Operating Policy; and

WHEREAS, pursuant to the County Agency's administrative fee policy (the "Fee Policy") the County Agency will charge an administrative fee (the "Administrative Fee") in connection with the Project; and

WHEREAS, in connection with the County Agency's deviation from its Operating Policy and the discussions with the Town Agency, the County Agency is willing to provide the Town Agency with a portion of the Administrative Fee pursuant to this Agreement by and between the County Agency and the Town Agency; and

WHEREAS, the sharing of the Administrative Fee between the County Agency and the Town Agency pursuant to this Agreement is for a proper purpose, to wit, to facilitate cooperation between the Agencies in order to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, all things necessary to constitute this Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Agreement have in all respects been duly authorized by the County Agency and the Town Agency;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below. All of the capitalized terms used in this Agreement and the preambles hereto not otherwise defined shall have the meanings assigned thereto in the Lease Agreement and made a part hereof

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the County Agency were the owner of the Project Facility and as if the Company and not the County Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Governmental Authority” means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

SECTION 1.2. INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. References herein to any “Article” shall be an Article of this Agreement unless otherwise specified.

(B) Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) The table of contents and any headings preceding the text of the Articles of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**SECTION 2.1 COUNTY AGENCY REPRESENTATIONS AND WARRANTIES.** The County Agency hereby represents and warrants that:

(A) The County Agency has been duly established as a public benefit corporation under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder.

(B) The County Agency has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County Agency and constitutes the legal, valid and binding obligation of the County Agency, enforceable against the County Agency in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) Neither the execution nor the delivery by the County Agency of this Agreement nor the performance by the County Agency of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the County Agency, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the County Agency is a party or by which the County Agency or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by the County Agency of this Agreement, except such as have been duly obtained or made.

(E) The County Agency has no knowledge of any Applicable Laws in effect on the date as of which this representation is being made which would prohibit the performance by the County Agency of this Agreement and the transactions contemplated hereby.

(F) There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending, or, to the County Agency's best knowledge, threatened against the County Agency wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the County Agency in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by the County Agency of its obligations hereunder or under any such other agreement or instrument.

**SECTION 2.2. TOWN AGENCY REPRESENTATIONS AND WARRANTIES.** The Town Agency hereby represents and warrants that:

(A) The Town Agency has been duly established as a public benefit corporation under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder.

(B) The Town Agency has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the Town Agency and constitutes the legal, valid and binding obligation of the Town Agency, enforceable against the Town Agency in accordance with its

terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) Neither the execution nor the delivery by the Town Agency of this Agreement nor the performance by the Town Agency of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Town Agency, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Town Agency is a party or by which the Town Agency or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by the Town Agency of this Agreement, except such as have been duly obtained or made.

(E) The Town Agency has no knowledge of any Applicable Laws in effect on the date as of which this representation is being made which would prohibit the performance by the Town Agency of this Agreement and the transactions contemplated hereby.

(F) There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending, or, to the Town Agency's best knowledge, threatened against the Town Agency wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the Town Agency in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by the Town Agency of its obligations hereunder or under any such other agreement or instrument.

## ARTICLE III

### AGREEMENTS

SECTION 3.1. REFERRAL OF THE PROJECT. (A) The County Agency and the Town Agency acknowledge the following:

(1) That a portion of the Project is located in the Town of New Scotland, and, accordingly, a potential legal issue exists regarding whether the Town Agency could undertake the Project in both the Town of Bethlehem and the Town of New Scotland.

(2) That Albany County and the County Agency are providing substantial additional assistance and support in connection with the undertaking of the portion of the Project to be leased by the Developer to the Company.

(3) That requiring the Company to divide the Project between the Town Agency and the County Agency would potentially cause significant inefficiencies and time delays.

(B) The Town Agency hereby acknowledges and accepts the County Agency's deviation from its Operating Policy, and agrees that the County Agency will undertake the Project.

SECTION 3.2. ADMINISTRATIVE FEE. (A) The County Agency will collect an Administrative Fee equal to one percent (1%) of the cost of the Project. The cost of the Project is presently estimated to equal approximately \$15,278,978, and, accordingly, the amount of the Administrative Fee be collected by the County Agency is equal to \$152,789.78.

(B) The County Agency agrees to provide to the Town Agency a portion of the Administrative Fee collected by the County Agency, equal to twenty-five percent (25%) of the total Administrative Fee, or \$38,197.45.

(C) The County Agency agrees to pay such portion to the Town Agency within thirty (30) days of receipt of an invoice from the Town Agency.

SECTION 3.3. CONFLICT OF INTEREST. (A) The Agencies have been informed that Hodgson Russ LLP ("Hodgson") is acting as Special Counsel to the County Agency with respect to the Project. The Agencies have been further informed that while Hodgson has acted as special counsel to the Town Agency on past matters, Hodgson is not acting as special counsel to the Town Agency in connection with the Project.

(B) The County Agency hereby waives any potential conflict resulting from Hodgson acting as counsel to the Town Agency on any other related or unrelated matters.

(C) The Town Agency hereby waives any potential conflict resulting from Hodgson acting as special counsel to the County Agency with respect to the Project, and waives any potential conflict resulting from Hodgson acting as special counsel to the County Agency on any other related or unrelated matters.

## ARTICLE IV

### MISCELLANEOUS

SECTION 4.1. TERM. The term of this Agreement shall commence as of the dated date hereof and shall expire on December 31, 2022.

SECTION 4.2. AMENDMENTS. This Agreement may not be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

SECTION 4.3. ASSIGNMENT. Neither this Agreement nor any rights and obligations hereunder may be assigned by either party without the prior written consent of the other party.

SECTION 4.4. NOTICES. All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and shall be sufficiently given if telecopied, delivered in person, sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight delivery service, addressed as follows:

#### IF TO THE COUNTY AGENCY:

Albany County Industrial Development Agency  
112 State Street  
Albany, New York 12207  
Attention: Chairman

#### WITH A COPY TO:

The Forman Law Firm  
68 Simmons Avenue  
Cohoes, New York 12047  
Attention: Walter J. Forman, Esq.

#### IF TO THE TOWN AGENCY:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue,  
Delmar, New York 12054  
Attention: Chairman

#### WITH A COPY TO:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue,  
Delmar, New York 12054  
Attention: Catherine Hedgeman, Esq.

SECTION 4.5. ENTIRE AGREEMENT. This Agreement constitutes the entire and complete agreement between the parties with respect to the subject matter hereof, and all previous discussions, understandings, arrangements and correspondence with respect to the subject matter hereof are superseded by the execution of this Agreement.

SECTION 4.6. COUNTERPARTS. This Agreement may be executed in several counterparts, any one of which shall be considered to be an original hereof for all purposes.

SECTION 4.7. SEVERABILITY. In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the County Agency and the Town Agency shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof shall not be affected thereby.

SECTION 4.8. GOVERNING LAW. The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the State.



IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed and delivered by their duly authorized representatives on the day and year first above written.

ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Chairman

TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Chair

**RESOLUTION AUTHORIZING  
ECONOMIC DEVELOPMENT COOPERATION AGREEMENT**

A regular meeting of Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on August 24, 2022, at 8:00 o’clock, a.m., local time.

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

**PRESENT:**

Victoria Storrs	Chair
Tim Maniccia	Secretary
Richard Kotlow	Treasurer
David Kidera	Member
Chris Bub	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Catherine Hedgeman, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
Robin Nagengast	Assistant Executive Director
Robert Leslie	Director, Department of Economic Development & Planning
A. Joseph Scott, III, Esq.	Agency Bond/Special Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. 0822-\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN  
ECONOMIC DEVELOPMENT COOPERATION AGREEMENT WITH THE  
ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY WITH RESPECT TO  
THE CHPE LLC PROJECT.**

WHEREAS, Town of Bethlehem 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 582 of the 1973 Laws of New York, as amended, constituting Section 909-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, 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, under the Act, to accomplish its stated purposes, the Agency is further authorized to enter into contracts and agreements; and

WHEREAS in April, 2021, CHPE LLC (the “Company”), a limited liability company duly organized and validly existing under the laws of the State of New York, submitted an application, as amended (the “Application”) to Albany County Industrial Development Agency (the “County Agency”), which Application requested that the County Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest or interests in various parcels of land spanning across 24.2 miles of land located in the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravena, Albany County, New York (collectively, the “Land”), (2) the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-megawatt (“MW”) high-voltage direct current (“HVDC”) electric transmission line and related infrastructure (collectively, the “Improvements”), and (3) the acquisition and installation thereon and therein of certain related machinery and equipment, including but not limited to, two (2) five-inch diameter HVDC transmission cables (collectively, the “Equipment”) (the Land, the Improvements and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to be used and operated by the Company as a portion of an electric transmission line from the U.S.-Canada border to New York City; (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 of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the County Agency; and

WHEREAS, the County Agency has a general operating policy (the “Operating Policy”) with respect to the undertaking of its projects, under which the County 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 Town of Bethlehem and the Town of Guilderland, and each town has its own industrial development agency, and (B) in connection with the Application, the Company made a request to the County Agency (the “County Agency Request”) that the County Agency deviate from the Operating Policy with respect to the Project Facility; and

WHEREAS, by resolution adopted by the members of the County Agency on February 9, 2022 (the “Approving Resolution”), the County Agency determined (A) to grant the Financial Assistance and to enter into a lease agreement dated as of August 1, 2022 (the “Lease Agreement”) between the County Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”), and (B) to deviate from its Operating Policy with respect to deferring to local industrial development agencies, here the Agency; and

WHEREAS, the County Agency and the Agency have had discussions regarding the mutual cooperation of the County Agency and the Agency with respect to the Project and the County Agency’s deviation from its Operating Policy; and

WHEREAS, pursuant to the County Agency’s administrative fee policy (the “Fee Policy”) the County Agency will charge an administrative fee (the “Administrative Fee”) in connection with the Project; and

WHEREAS, in connection with the County Agency's deviation from its Operating Policy and the discussions with the Agency, the County Agency is willing to provide the Agency with a portion of the Administrative Fee pursuant to a proposed economic development cooperation agreement by and between the County Agency and the Agency (the "Economic Development Cooperation Agreement"); and

WHEREAS, the sharing of the Administrative Fee between the County Agency and the Agency pursuant to the Economic Development Cooperation Agreement is for a proper purpose, to wit, to facilitate cooperation between the County Agency and the Agency in order to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency desire to consider entering into the Economic Development Cooperation Agreement; and

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

Section 1. The Agency has reviewed Economic Development Cooperation Agreement and the terms of the proposed sharing of the Administrative Fee and the Agency hereby makes the following findings and determinations with respect to the Economic Development Cooperation Agreement:

(A) The Economic Development Cooperation Agreement outlines a procedure for cooperation between the Agency and the County Agency with respect to the undertaking of the Project; and

(B) It is desirable and in the public interest for the Agency to enter into the Economic Development Cooperation Agreement.

Section 2. The members of the Agency hereby approve the execution and delivery by the Agency of the Economic Development Cooperation Agreement with the County Agency and hereby direct the Chair of the Agency and the Agency Counsel to take all steps to implement the provisions of the Economic Development Cooperation Agreement.

Section 3. 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 Economic Development Cooperation 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 Economic Development Cooperation Agreement.

Section 4. 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:

Victoria Storrs	VOTING	_____
Tim Maniccia	VOTING	_____
Richard Kotlow	VOTING	_____
David Kidera	VOTING	_____
Chris Bub	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of Town of Bethlehem 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 August 24, 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 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 \_\_\_\_ day of August, 2022.

---

Secretary

(S E A L)

DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: AUGUST 17, 2022

---

ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT AGENCY

AND

TOWN OF GUILDERLAND  
INDUSTRIAL DEVELOPMENT AGENCY

---

ECONOMIC DEVELOPMENT COOPERATION AGREEMENT

---

RELATING TO THE  
CHPE LLC PROJECT

---

DATED AS OF AUGUST 1, 2022

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(This Table of Contents is not a part of the Economic Development Cooperation Agreement and is only for convenience of reference.)

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## ECONOMIC DEVELOPMENT COOPERATION AGREEMENT

THIS ECONOMIC DEVELOPMENT COOPERATION AGREEMENT (the “Agreement”) dated as of August 1, 2022 by and among the ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “County Agency”), having an office at 112 State Street, Albany, New York 12207; the TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY (the “Bethlehem Agency”), having an office at 445 Delaware Avenue, Delmar, New York 12054; and the TOWN OF GUILDERLAND INDUSTRIAL DEVELOPMENT AGENCY (the “Guilderland Agency,” and collectively with the Bethlehem Agency, the “Town Agencies”), having an office at 5209 Western Turnpike, P.O. Box 339, Guilderland, New York 112084 (the County Agency and the Town Agencies shall hereinafter be collectively referred to as the “Agencies”).

### W I T N E S S E T H:

WHEREAS, the Agencies are 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: (1) the County Agency is further authorized and empowered by Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law; (2) the Bethlehem Agency is further authorized and empowered by Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law; and (3) the Guilderland Agency is further authorized and empowered by Chapter 146 of the 1973 Laws of New York, as amended, constituting Section 909-a of said General Municipal Law (said Chapters 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 their stated purposes, the Agencies are 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, under the Act, to accomplish their stated purposes, the Agencies are each authorized to enter into contracts and agreements; and

WHEREAS, CHPE LLC (the “Company”), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application, as amended (the “Application”) to the County Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest or interests in various parcels of land spanning across 24.2 miles of land located in the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravena, Albany County, New York (collectively, the “Land”), (2) the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-megawatt (“MW”) high-voltage direct current (“HVDC”) electric transmission line and related infrastructure (collectively, the “Improvements”), and (3) the acquisition and installation thereon and therein of certain related machinery and equipment, including but not limited to, two (2) five-inch diameter HVDC transmission cables (collectively, the “Equipment”) (the Land, the Improvements and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to be used and operated by the Company as a portion of an electric transmission line from the

U.S.-Canada border to New York City; (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 of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the County Agency; and

WHEREAS, the County Agency has a general operating policy (the “Operating Policy”) with respect to the undertaking of its projects, under which the County 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 Guilderland, and each town has its own industrial development agency, and (B) in connection with the Application, the Company made a request to the County Agency (the “County Agency Request”) that the County Agency deviate from the Operating Policy with respect to the Project Facility; and

WHEREAS, by resolution adopted by the members of the County Agency on February 9, 2022 (the “Approving Resolution”), the County Agency determined (a) to grant the Financial Assistance and to enter into a lease agreement dated as of August 1, 2022 (the “Lease Agreement”) between the County Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”), and (b) to deviate from its Operating Policy with respect to deferring to local industrial development agencies, here the Town Agencies; and

WHEREAS, the County Agency and the Town Agencies have had discussions regarding the mutual cooperation of the County Agency and the Town Agencies with respect to the Project and the County Agency’s deviation from its Operating Policy; and

WHEREAS, pursuant to the County Agency’s administrative fee policy (the “Fee Policy”) the County Agency will charge an administrative fee (the “Administrative Fee”) in connection with the Project; and

WHEREAS, in connection with the County Agency’s deviation from its Operating Policy and the discussions with the Town Agencies, the County Agency is willing to provide each of the Town Agencies with a portion of the Administrative Fee pursuant to this Agreement by and between the County Agency and the Town Agencies; and

WHEREAS, the sharing of the Administrative Fee between the County Agency and the Town Agencies pursuant to this Agreement is for a proper purpose, to wit, to facilitate cooperation between the Agencies in order to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, all things necessary to constitute this Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Agreement have in all respects been duly authorized by the County Agency and the Town Agencies;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below. All of the capitalized terms used in this Agreement and the preambles hereto not otherwise defined shall have the meanings assigned thereto in the Lease Agreement and made a part hereof

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the County Agency were the owner of the Project Facility and as if the Company and not the County Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Governmental Authority” means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

SECTION 1.2. INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. References herein to any “Article” shall be an Article of this Agreement unless otherwise specified.

(B) Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) The table of contents and any headings preceding the text of the Articles of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.1 COUNTY AGENCY REPRESENTATIONS AND WARRANTIES. The County Agency hereby represents and warrants that:

(A) The County Agency has been duly established as a public benefit corporation under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder.

(B) The County Agency has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County Agency and constitutes the legal, valid and binding obligation of the County Agency, enforceable against the County Agency in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) Neither the execution nor the delivery by the County Agency of this Agreement nor the performance by the County Agency of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the County Agency, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the County Agency is a party or by which the County Agency or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by the County Agency of this Agreement, except such as have been duly obtained or made.

(E) The County Agency has no knowledge of any Applicable Laws in effect on the date as of which this representation is being made which would prohibit the performance by the County Agency of this Agreement and the transactions contemplated hereby.

(F) There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending, or, to the County Agency's best knowledge, threatened against the County Agency wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the County Agency in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by the County Agency of its obligations hereunder or under any such other agreement or instrument.

SECTION 2.2. BETHLEHEM AGENCY REPRESENTATIONS AND WARRANTIES. The Bethlehem Agency hereby represents and warrants that:

(A) The Bethlehem Agency has been duly established as a public benefit corporation under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder.

(B) The Bethlehem Agency has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the Bethlehem Agency and constitutes the legal, valid and binding obligation of the Bethlehem Agency, enforceable against the Bethlehem Agency

in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) Neither the execution nor the delivery by the Bethlehem Agency of this Agreement nor the performance by the Bethlehem Agency of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Bethlehem Agency, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Bethlehem Agency is a party or by which the Bethlehem Agency or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by the Bethlehem Agency of this Agreement, except such as have been duly obtained or made.

(E) The Bethlehem Agency has no knowledge of any Applicable Laws in effect on the date as of which this representation is being made which would prohibit the performance by the Bethlehem Agency of this Agreement and the transactions contemplated hereby.

(F) There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending, or, to the Bethlehem Agency's best knowledge, threatened against the Bethlehem Agency wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the Bethlehem Agency in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by the Bethlehem Agency of its obligations hereunder or under any such other agreement or instrument.

**SECTION 2.2. GUILDERLAND AGENCY REPRESENTATIONS AND WARRANTIES.** The Guilderland Agency hereby represents and warrants that:

(A) The Guilderland Agency has been duly established as a public benefit corporation under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder.

(B) The Guilderland Agency has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the Guilderland Agency and constitutes the legal, valid and binding obligation of the Guilderland Agency, enforceable against the Guilderland Agency in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) Neither the execution nor the delivery by the Guilderland Agency of this Agreement nor the performance by the Guilderland Agency of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guilderland Agency, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Guilderland Agency is a party or by which the Guilderland Agency or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by the Guilderland Agency of this Agreement, except such as have been duly obtained or made.

(E) The Guilderland Agency has no knowledge of any Applicable Laws in effect on the date as of which this representation is being made which would prohibit the performance by the Guilderland Agency of this Agreement and the transactions contemplated hereby.

(F) There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending, or, to the Guilderland Agency's best knowledge, threatened against the Guilderland Agency wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the Guilderland Agency in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by the Guilderland Agency of its obligations hereunder or under any such other agreement or instrument.



### ARTICLE III

#### AGREEMENTS

SECTION 3.1. REFERRAL OF THE PROJECT. (A) The County Agency and the Town Agencies acknowledge the following:

(1) That a portion of the Project is located in various municipalities throughout Albany County, including (a) the Town of New Scotland, (b) the Town of Coeymans, (c) the Town of Guiderland, (d) the Town of Bethlehem, (e) the Village of Voorheesville, and (f) the Village of Ravena, and, accordingly, a potential legal issue exists regarding whether the Town Agencies could undertake the Project where portions of the Project extend outside of the sponsoring municipalities of each of the Town Agencies.

(2) That Albany County and the County Agency are providing substantial additional assistance and support in connection with the undertaking of the Project.

(3) That requiring the Company to divide the Project between the Town Agencies and the County Agency would potentially cause significant inefficiencies and time delays.

(B) The Town Agencies hereby acknowledge and accept the County Agency's deviation from its Operating Policy, and agree that the County Agency will undertake the Project.

SECTION 3.2. ADMINISTRATIVE FEE. (A) The County Agency will collect an Administrative Fee equal to one percent (1%) of the cost of the Project. The cost of the Project is presently estimated to equal approximately \$228,623,520.00, and, accordingly, the amount of the Administrative Fee be collected by the County Agency is equal to \$2,286,235.

(B) The County Agency agrees to provide to the Town Agencies with a portion of the Administrative Fee collected by the County Agency, which such portions shall be calculated as follows:

(1) Determine the percentage of the Project located in the Town of Bethlehem and the Town of Guiderland, respectively;

(2) Multiply the total cost of the Project by the percentage determined in subsection (1) above; and

(3) Multiply the portion of the cost of the Project located in the Town of Bethlehem and the Town of Guiderland, respectively, calculated in subsection (2) above, by a local administrative fee of 0.25%.

(C) For purposes of illustration, the following is a calculation of each factor outlined in Section 3.2(B) hereof:

(1) Percentage of the Project located within the Town of Bethlehem and the Town of Guiderland, respectively:

<b>Town</b>	<b>Linear Distance of the Project located within the Town</b>	<b>Percentage of the Project located within the Town</b>
Town of Bethlehem	6.511894 miles	26.86% (6.511894/24.2 miles)
Town of Guiderland	6.751141 miles	27.85% (6.751141/24.2 miles)

(2) Percentage of the cost of the Project associated with the Town of Bethlehem and the Town of Guilderland, respectively:

<b>Town</b>	<b>Percentage of the Project located within the Town</b>	<b>Percentage of the cost of the Project associate with the Town</b>
Town of Bethlehem	26.86%	\$61,408,277.47
Town of Guilderland	27.85%	\$63,671,650.32

(3) Calculation of local administrative fee of 0.25%:

<b>Town</b>	<b>Percentage of the cost of the Project associate with the Town</b>	<b>Local Administrative Fee</b>
Town of Bethlehem	\$61,408,277.47	\$153,520.70
Town of Guilderland	\$63,671,650.32	\$159,179.13

(D) The County Agency agrees to pay the portion due to each of the Town Agencies, as set forth in Section 3.2(C) above, within thirty (30) days of the Escrow Delivery Date (as defined in the Lease Agreement).

SECTION 3.3. CONFLICT OF INTEREST. (A) The Agencies have been informed that Hodgson Russ LLP (“Hodgson”) is acting as Special Counsel to the County Agency with respect to the Project. The Agencies have been further informed that while Hodgson has acted as special counsel to each the of Town Agencies on past matters, Hodgson is not acting as special counsel to either of the Town Agencies in connection with the Project.

(B) The County Agency hereby waives any potential conflict resulting from Hodgson acting as counsel to the Town Agencies on any other related or unrelated matters.

(C) The Bethlehem Agency hereby waives any potential conflict resulting from Hodgson acting as special counsel to the County Agency with respect to the Project, and waives any potential conflict resulting from Hodgson acting as special counsel to the County Agency on any other related or unrelated matters.

(D) The Guilderland Agency hereby waives any potential conflict resulting from Hodgson acting as special counsel to the County Agency with respect to the Project, and waives any potential conflict resulting from Hodgson acting as special counsel to the County Agency on any other related or unrelated matters.

## ARTICLE IV

### MISCELLANEOUS

SECTION 4.1. TERM. The term of this Agreement shall commence as of the dated date hereof and shall expire on December 31, 2025.

SECTION 4.2. AMENDMENTS. This Agreement may not be changed, modified, amended or waived except by written agreement duly authorized and executed by all of the parties.

SECTION 4.3. ASSIGNMENT. Neither this Agreement nor any rights and obligations hereunder may be assigned by either party without the prior written consent of each of the other parties.

SECTION 4.4. NOTICES. All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and shall be sufficiently given if telecopied, delivered in person, sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight delivery service, addressed as follows:

#### IF TO THE COUNTY AGENCY:

Albany County Industrial Development Agency  
112 State Street  
Albany, New York 12207  
Attention: Chairman

#### WITH A COPY TO:

The Forman Law Firm  
68 Simmons Avenue  
Cohoes, New York 12047  
Attention: Walter J. Forman, Esq.

#### IF TO THE BETHLEHEM AGENCY:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue,  
Delmar, New York 12054  
Attention: Chair

#### WITH A COPY TO:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue,  
Delmar, New York 12054  
Attention: Catherine Hedgeman, Esq.

IF TO THE GUILDERLAND AGENCY:

Town of Guilderland Industrial Development Agency  
5209 Western Turnpike  
PO Box 339  
Guilderland, NY 112084  
Attention: Chair

WITH A COPY TO:

Town of Guilderland Industrial Development Agency  
5209 Western Turnpike  
PO Box 339  
Guilderland, NY 112084  
Attention: Chief Executive Officer

SECTION 4.5. ENTIRE AGREEMENT. This Agreement constitutes the entire and complete agreement among the parties with respect to the subject matter hereof, and all previous discussions, understandings, arrangements and correspondence with respect to the subject matter hereof are superseded by the execution of this Agreement.

SECTION 4.6. COUNTERPARTS. This Agreement may be executed in several counterparts, any one of which shall be considered to be an original hereof for all purposes.

SECTION 4.7. SEVERABILITY. In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the County Agency and the Town Agencies shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof shall not be affected thereby.

SECTION 4.8. GOVERNING LAW. The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the State.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed and delivered by their duly authorized representatives on the day and year first above written.

ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Chairman

TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Chair

TOWN OF GUILDERLAND  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Chair

**RESOLUTION AUTHORIZING  
EXECUTIVE DIRECTOR PERFORMANCE EVALUATION PROCESS POLICY**

A regular meeting of Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on August 24, 2022, at 8:00 o’clock, a.m., local time.

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

**PRESENT:**

Victoria Storrs	Chair
Richard Kotlow	Treasurer
David Kidera	Member
Victor Franco	Member
Edward DeBarbieri	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Catherine Hedgeman, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
Robert Leslie	Director, Department of Economic Development & Planning
John Taylor	Senior Economic Developer
A. Joseph Scott, III, Esq.	Agency Bond/Special Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

**RESOLUTION AUTHORIZING  
EXECUTIVE DIRECTOR PERFORMANCE EVALUATION PROCESS POLICY**

WHEREAS, Town of Bethlehem 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 582 of the 1973 Laws of New York, as amended, constituting Section 909-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, the Agency is required to have adopt and implement policies with regard to governance of the Agency; and

WHEREAS, the governance committee of the Agency has met and reviewed the attached proposed Executive Director Performance Evaluation Process policy, and recommends that the Agency board adopt the policy;

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

Section 1. The Agency has reviewed the Executive Director Performance Evaluation Process Policy and the Agency hereby makes the following findings and determinations with respect to the policy:

(A) The Executive Director Performance Evaluation Process Policy outlines a procedure for review of the performance of the Executive Director; and

(B) It is desirable and in the public interest for the Agency to approve the Executive Director Performance Evaluation Process Policy; and

Section 2. The members of the Agency hereby approve the Executive Director Performance Evaluation Process Policy and hereby direct the Chair of the Agency to take all steps to implement the provisions of the Executive Director Performance Evaluation Process Policy.

Section 4. 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:

Victoria Storrs	Chair	_____
Richard Kotlow	Treasurer	_____
David Kidera	Member	_____
Victor Franco	Member	_____
Edward DeBarbieri	Member	_____

The foregoing Resolution was thereupon declared duly adopted.



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

I, the undersigned Secretary of Town of Bethlehem 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 August 24, 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 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 \_\_\_\_ day of August, 2022.

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Secretary

(S E A L)

**TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
EXECUTIVE DIRECTOR PERFORMANCE EVALUATION PROCESS**

In accordance with Town of Bethlehem Industrial Development Agency ("Agency") policy and provisions of the Public Authorities Accountability Act of 2005, the Agency's Board of Directors has adopted the following process for evaluating, annually, the performance of the Agency's Executive Director relative to the Agency's goals, policies and procedures.

1. An evaluation of the Executive Director's performance shall be conducted at the end of the Agency's fiscal year and each board member then in office shall have the opportunity to independently evaluate and comment on such performance.
2. Each participating board member shall use the performance evaluation instrument adopted by the Agency for this purpose and shall submit their evaluation of the Executive Director's performance, including any comments, observations or recommendations, to the Governance Committee within thirty (30) days of the end of the fiscal year.
3. The Chair of the Governance Committee shall compile the results of these evaluations and convene a meeting of the Governance Committee to review such comments, observations, and performance ratings, and to assess whether any recommended actions are necessary. This discussion may be held in executive session.
4. The Governance Committee Chair shall share the results of this evaluation process with the Agency Chair and both Chairs shall meet with the Executive Director to review the Executive Director's performance for the most recent fiscal year. This discussion may be held in executive session and other board members may attend.
5. At the last regular meeting of the Agency board for the fiscal year, board members shall have the opportunity to incorporate specific performance goals, objectives or measures into the performance evaluation instrument and to make other changes to the instrument as agreed to by a majority vote of the members. Any such changes shall be effective at the start of the following fiscal year.