

**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, September 28,**  
**2022**

**8:00 AM**

**Town Hall Room 101**

**Livestream:**

**<https://us02web.zoom.us/j/82504885834?pwd=b1JxY2JMMzJpdGNUQ1JVWmxqakJsdz09>**

**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 – August 24, 2022

**IV. Reports of Committees**

1. Report of the Finance Committee (Kotlow)
  - Financial Statements (Maikels)
  - Review and discussion on new Fee Schedule
  - Review and discussion regarding current project fee income
2. Report of the Governance Committee (Kidera)

**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. Resolution to approve an Economic Development Cooperation Agreement-  
**CHPE**

### **VIII. Future Meetings**

Discussion (Hedgeman)  
Schedule Attached below

### **VIII. Adjourn**

## **REVISED CALENDAR OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY BOARD MEETINGS**

### **2022**

Wednesday, October 26, 2022 at 8:00am

Wednesday, November 16, 2022 at 8:00am

Wednesday, December 21, 2022 at 8:00am

### **2023**

Wednesday, January 25, 2023 at 8:00am

Wednesday, February 15, 2023 at 8:00am

Wednesday, March 22, 2023 at 8:00am

Wednesday, April 26, 2023 at 8:00am

Wednesday, May 24, 2023 at 8:00am

Wednesday, June 28, 2023 at 8:00am

Wednesday, July 26, 2023 at 8:00am

Wednesday, August 23, 2023 at 8:00am

Wednesday, September 27, 2023 at 8:00am

Wednesday, October 25, 2023 at 8:00am

Wednesday, November 15, 2023 at 8:00am

Wednesday, December 20, 2023 at 8:00am



**Victoria Storrs**  
*Chair*  
**Vacant**  
*Vice Chair/ Assistant Secretary*

**Vacant**  
*Secretary*

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*Treasurer*

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*Member*

**Victor Franco**  
*Member*

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*Member*

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**Regular Meeting Minutes**  
**August 24, 2022**  
**8:00 AM**

**Town Hall Room 101**

**Catherine M.  
Hedgeman, Esq.**  
*Executive Director,  
Assistant Secretary and  
Agency Counsel*  
518-439-4955

**Allen F. Maikels**  
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Contracting Officer*  
518-487-4679

**John Taylor**  
*Senior Economic Developer*  
518-439-4995Ext.

**Call to Order/Roll Call/Quorum Approval**

A regular meeting of the Bethlehem Industrial Development Agency of the Town of Bethlehem was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, New York. The meeting was called to order at 8:06 AM. The roll was called and it was determined that there was a quorum present.

**Introduction of New Members.** Chairperson Storrs introduced the two new IDA board members: Victor Franco and Edward DeBarbieri. The new board members were appointed by the Town Board.

**Minutes Approval Regular Meeting.** Chairperson Storrs stated that the board was going to alter the order of business today and that the minutes from the June 22, 2022 meeting will be tabled until the September meeting. She noted that the minutes are published on IDA website and will be approved in September.

**Chairperson Storrs stated that the report of committees and communications will be moved further down on the agenda.**

**Chairperson Storrs stated that the financial statements will be tabled until the September meeting. She further stated that the financials are in good shape and will be reviewed in September.**

**New Business.** Chairperson Storrs stated that since Robin Nagengast has resigned from the position of Assistant Director of the IDA and that Hedgeman Law Firm has submitted a proposal for administrative services. There was discussion as to the term of the contract and Ms. Hedgeman stated that this proposal was an amendment to the existing contract with her office. There was also discussion on the ABO requirements for paper and electronic copies of the IDA documents. Ms. Hedgeman stated that in the past there were only paper documents and that we need to update the documents into an electronic format. Upon a motion from Mr. Kotlow and a second by Mr. Kidera, the motion was unanimously approved.

Chairperson Storrs stated the next item was the resignation and appointments to the Board. She stated that Mr. Maniccia has resigned since the last meeting in July . Chairperson Storrs further stated that Mr. Bub has also resigned from the Board due to changes in his job. She thanked both members for their service to the Board.

Chairperson Storrs stated that with the addition of the 2 new members today the board is up to 5 members and that she is working with the town to appoint 2 additional members for a total of 7 members.

Chairperson Storrs stated that item number 3 under new business have been tabled until the September meeting.

Chairperson Storrs stated that the next item on the agenda under New Business was the Resolution to approve an Economic Development Cooperation Agreement-**PLUG POWER PROJECT**. She stated that the Albany County IDA is handling the PILOT and that a portion of the project is in the Town of New Scotland. Albany County IDA has asked to partner with them and they proposed a fee splitting agreement in which we would be collecting 25% of the fee which equates to approximately \$144,000. Upon a motion by Mr. DeBarbieri which was seconded by Mr. Kotlow the resolution was unanimously approved.

Chairperson Storrs stated that the next item on the agenda under New Business was Resolution to approve an Economic Development Cooperation Agreement-**CHPE**. Chairperson Storrs stated that this agreement is similar to the agreement the board just approved with Albany County and it involves the Champlain Hudson Pipeline which will run through all of Albany County. After a brief discussion the board agreed to table the vote until September in order to review additional information and to allow the new board members to become familiar with the project.

Chairperson Storrs stated the next item on the agenda was Resolution to approve the proposed **EXECUTIVE DIRECTOR PERFORMANCE EVALUATION PROCESS**. Mr. Kidera stated that the Governance committee met in July and discussed the performance evaluation process for the Executive Director. He further stated that the board is required to do a self-evaluation each year in accordance with the ABO requirements and this evaluation would be similar and that process. The Executive Director would meet with the Chairperson of the Governance Committee and Chairperson of the IDA within 30 days of the end of the fiscal year to review the evaluation. Upon a motion by Mr. Kidera, seconded by Mr. Franco, the Resolution was unanimously approved.

Chairperson Storrs stated that the next item for discussion under Reports of Committees was the appointment of Mr. Kotlow as the Chairman of the Finance Committee. Upon a motion by Mr. Franco, seconded by Mr. Franco the motion was approved unanimously.

The meeting was interrupted by a group of residents surrounding the Port of Albany Project. Ms. Hedgeman stated that there is no public comment during this meeting. Ms. Hedgeman stated that there was a public hearing on the project last October and that was the time to comment. Chairperson Storrs stated that public comment will not be taken at this meeting. Mr. Kotlow made a motion to adjourn the meeting, Mr. Franko seconded the motion which was unanimously approved and the meeting was adjourned at 8:29 AM.





BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF NET ASSETS  
August 31, 2022

ASSETS	August 31, 2022
Current Assets	
Checking/Savings	
200.04 Cash-M&T Bank Agency Account	861,013.61
Total Checking/Savings	861,013.61
Other Current Assets	
380 Fee Receivable	92,590.50
480 Prepaid Expense	1,206.68
Total Other Current Assets	93,797.18
Total Current Assets	954,810.79
<b>TOTAL ASSETS</b>	<b>954,810.79</b>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
601 Accrued Expenses	13,556.25
Total Current Liabilities	13,556.25
Total Liabilities	13,556.25
Equity	
924 Net Assets	
924.3 Net Assets-Unassigned	941,254.54
Total 924 Net Assets	941,254.54
Total Equity	941,254.54
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>954,810.79</b>

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF REVENUE AND EXPENSES  
August 31, 2022

ORDINARY INCOME/EXPENSE

Income

2116 FEE INCOME 467,213.30

2116.1 PSEG ENERGY REIMB 123,795.24

Total Income 591,008.54

Expenses

6460.4 Contractual Expenses 85,366.26

6460.5 Business & Economic Development 4,000.00

Total Expenses 89,366.26

NET ORDINARY INCOME 501,642.28

Other Income/Expense

Other Income

2401 Interest Income 63.77

Total Other Income 63.77

NET INCOME 501,706.05

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
BUDGET VS ACTUAL  
August 31, 2022

Ordinary Income/Expense	Aug-22	YTD Budget	Variance	Annual Budget
Income				
2116 Fee Income	467,213.30	35,162.66	432,050.64	52,744.00
2106.1 PSEG Energy Reimb	123,795.24	46,666.66	77,128.58	70,000.00
Total Income	591,008.54	81,829.32	509,179.22	122,744.00
Expenses				
6460.4 Contractual Expenses	85,366.26	78,706.66	6,659.60	118,060.00
6460.5 Business and Economic Dev	4,000.00	1,333.32	2,666.68	2,000.00
Total Expenses	89,366.26	80,039.98	9,326.28	120,060.00
Net Ordinary Income	501,642.28	1,789.34	499,852.94	2,684.00
Other Income/Expense				
2401 Interest Income	63.77	200.00	-136.23	300.00
Total Other Income	63.77	200.00	-136.23	300.00
Net Income	501,706.05	1,989.34	499,716.71	2,984.00

## Bethlehem IDA Proposed Fee Schedule 2022-2023

### Current Policy

(B). BIDA FEES. Payments of all fees and associated closing costs may be paid for with a portion of the proceeds of the bond issue, subject to federal limitations. A non-refundable administrative fee of \$500.00 is charged on all applications. In addition, the Agency charges a general Agency fee, payable at time of closing, as follows:

- Tax Exempt Bond:  $\frac{3}{4}$  of 1% of the bond amount
- Taxable Bond:  $\frac{3}{4}$  of 1% of the bond amount
- Straight Lease:  $\frac{3}{4}$  of 1% of the cost of the project
- Not-for-profit:  $\frac{3}{4}$  of 1% of the bond amount
- 501(c)(3) Not-for-profit that directly supports enhanced high priority services needed by the Town of Bethlehem as determined by the Agency, (e.g., low income affordable housing):  $\frac{1}{2}$  of 1% of the bond amount or cost of a straight lease project.

The Agency will charge annually an administrative fee of 5 basis points computed on (i) on the original bond amount or (ii) in the case of a straight lease on the cost of the project; the fee shall be payable on January 1 of each year until all the financing documents shall terminate and be discharged and satisfied.

The Agency will also charge an administrative fee for post-closing modifications/ amendments of transactions. Such fees shall be determined by the staff of the Agency and reviewed and approved by the Agency. The minimum administrative fee for a post-closing modification/amendment of transaction shall be \$250.00.

The developer is also responsible for payment of the Agency's counsel fee and bond counsel's fee.

### Proposed Changes for Discussion:

Addition of:

Initial Application fees for PILOT, Sales and Use Tax, Mortgage/Transfer Tax: \$750 (preliminary fee to determine eligibility and interest in the project)

PILOT Administrative Fees: \$2,500- \$10,000

Sales and Use Tax/Mortgage Tax: \$2,500- \$7500

Refinance of Existing Benefits: \$2,500- \$7500

Assignments: \$5,000- \$15,000

Miscellaneous Consents: \$2,500- \$7500

**\*\*These fees are IDA Administrative Fees. All applicants shall pay all Agency Attorneys' fees in addition to administrative fees.**

Bethlehem IDA Project Summary

Project Name	Status	Project Basis (Project Size)	Closing Date	Application Fee	Agency Fee (0.75%)	Counsel Fee	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
							Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)	Annual Fee (0.05%)
Closing 2011																			
Infrastructure	Closed	\$6,750,000	12/30/2011	\$10,000	\$125,000	\$45,000	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375	\$3,375
ShopRite	Closed	\$12,799,450	12/30/2011	\$500	\$95,996	\$8,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
ShopRite Equip	Closed	\$4,750,000	4/16/2012	\$500	\$35,625	\$4,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Closing 2012																			
Bershire	Closed	\$1,816,890	5/9/2012	\$500	\$13,627	\$5,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SEFCU	Closed	\$1,816,890	5/9/2012	\$500	\$13,627	\$5,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Albany Enterprises	Closed	\$3,900,000	7/30/2012	\$500	\$29,250	\$5,000	\$1,950	\$1,950	\$1,950	\$1,950	\$1,950	\$1,950	\$1,950.00	\$1,950.00	\$1,950.00	\$1,950.00	\$1,950.00	\$0.00	\$0.00
Columbia 14	Closed	\$1,565,500	11/5/2012	\$500	\$11,741	\$4,000	\$783	\$783	\$783	\$783	\$783	\$783	\$783.00	\$783.00	\$783.00	\$783.00	\$783.00	\$0.00	\$0.00
Closing 2013																			
Finke Eneterprises	Closed	\$7,171,200	3/20/2013	\$500	\$53,784	\$7,500	\$0.00	\$3,586	\$3,586	\$3,586	\$3,586	\$3,586	\$3,586.00	\$3,586.00	\$3,586.00	\$3,586.00	\$3,586.00	\$3,586.00	\$0.00
Columbia 10	Closed	\$2,066,500	8/20/2013	\$500	\$15,500	\$6,000	\$0.00	\$1,033	\$1,033	\$1,033	\$1,033	\$1,033	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Columbia 5	Closed	\$1,245,000	8/20/2013	\$500	\$9,338	\$6,000	\$0.00	\$623	\$623	\$623	\$623	\$623	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Columbia 15 *	Pending	\$3,261,500	3/22/2013	\$500	\$12,231		\$0.00	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Closing 2014																			
ARHC/Slingerlands 11	Closed		6/13/2014	\$500	\$2,000	\$1,500	\$0.00	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
ARCP/Selkirk Ventures	Closed		7/29/2014	\$500	\$2,000	\$1,500													
American Housing	Closed		10/28/2014		\$1,000	\$2,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0	\$0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Closing 2016																			
Coeymans Recycling	Closed	\$4,905,000	5/12/2016	\$500	\$36,787	\$5,000	\$0.00	\$0.00	\$0.00	\$0.00	\$2,453	\$2,453	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Closing 2018																			
Air Products	Closed	\$14,100,000		\$500	\$105,750	\$9,000						\$7,050	\$7,050	\$7,050	\$7,050	\$7,050	\$7,050	\$7,050	\$7,050
SAE SUN Monolith	Closed	\$4,608,000		\$500	\$34,560	\$6,500						\$2,304	0	0	\$0	\$0			
Totals		\$70,755,930		\$17,500	\$597,816	\$121,000	\$6,108	\$11,350	\$11,350	\$11,350	\$13,803	\$23,157	\$16,744	\$16,744	\$16,744	\$16,744	\$16,744	\$14,011	\$10,425
PSEG							\$70,000	\$70,000	\$70,000	\$106,000	\$70,000	\$72,500	\$72,000	\$68,000	\$38,000	\$70,000	\$80,000	\$40,000	\$0
Port of Albany	Closed			\$500	\$303,258												\$117,607.00	\$117,607.00	\$117,607.00
Totals																	\$214,351	\$171,618	\$128,032

\* temporary appointment of sales tax agent

**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 September 28 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 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	Chair	Victoria Storrs
Richard Kotlow	Treasurer	Richard Kotlow
David Kidera	Member	David Kidera
Victor Franco	Member	Victor Franco
Edward DeBarbieri	Member	Edward DeBarbieri

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 September, 2022.

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Secretary

(S E A L)

DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: AUGUST 18, 2022

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ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT AGENCY

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ECONOMIC DEVELOPMENT COOPERATION AGREEMENT

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RELATING TO THE  
PLUG POWER INC. PROJECT

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DATED AS OF SEPTEMBER 1, 2022

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## TABLE OF CONTENTS

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

Page

### PARTIES RECITALS

### ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.1	Definitions .....	2
Section 1.2	Interpretation.....	2

### ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1	County Agency Representations and Warranties.....	2
Section 2.2	Town Agency Representations and Warranties .....	3

### ARTICLE III AGREEMENTS

Section 3.1	Referral of the Project.....	4
Section 3.2	Administrative Fees .....	4
Section 3.3	Conflicts.....	4

### ARTICLE IV MISCELLANEOUS

Section 4.1	Term.....	4
Section 4.2	Amendments .....	4
Section 4.3	Assignment .....	4
Section 4.4	Notices .....	5
Section 4.5	Entire Agreement.....	5
Section 4.6	Counterparts.....	5
Section 4.7	Severability .....	5
Section 4.8	Governing Law .....	5

TESTIMONIUM.....	6
SIGNATURES .....	6



## 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.

### 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, 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