



**Meeting Agenda – STAMP Committee**  
 Genesee County Economic Development Center  
 Tuesday, March 2, 2021  
 Location: Electronically  
 10:30 a.m.

Page #s	Topic	Discussion Leader	Desired Outcome
	<b>1. Call to Order – Enter Public Session</b>  Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, this Meeting is being held electronically via conference call / video conference instead of a public meeting open for the public to attend in person.	P. Zelif	
	1a. Executive Session Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: <ol style="list-style-type: none"> <li>1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.</li> </ol> 1b. Enter Public Session	P. Zelif	
2-4	<b>2. Chairman's Report &amp; Activities</b>  2a. Agenda Additions / Deletions / Other Business  2b. Minutes: February 3, 2021	P. Zelif	Vote
5-13 14-36 37	<b>3. Discussions / Official Recommendations to the Board:</b>  3a. Lewiston Road Purchase Resolution  3b. PSA Project Gateway Resolution  3c. Phillips Lytle Contract – Memo	M. Masse  M. Masse  S. Hyde	Disc / Vote  Disc / Vote  Discussion
	5. Adjournment	P. Zelif	Vote



**GCEDC STAMP Committee Meeting**

**Wednesday, February 3, 2021**

**Location: Electronically**

**8:30 a.m.**

**MINUTES**

**ATTENDANCE**

Committee Members:	C. Klotzbach, C. Yunker, P. Zeliff, A. Vanderhoof
Staff:	M. Masse, L. Casey, J. Krencik, C. Suozzi, S. Hyde, P. Kennett, L. Farrell
Guests:	A. Walters (Phillips Lytle), R. Crossen (Town of Alabama Supervisor), P. Battaglia (GCEDC/GGLDC Board Member)
Absent:	

**1. Call to Order / Enter Public Session**

P. Zeliff called the meeting to order at 8:32 a.m. via conference call / video conference.

Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo’s Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, this Meeting is being held electronically via conference call instead of a public meeting open for the public to attend in person.

**2a. Executive Session**

C. Klotzbach made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:33 a.m., for the following reasons:

1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.

The motion was seconded by A. Vanderhoof and approved by all members present.

C. Suozzi & R. Crossen left the meeting at 8:46 a.m.

**2b. Re-Enter Public Session**

C. Yunker made a motion to enter back into public session at 9:27 a.m., seconded by C. Klotzbach and approved by all.

R. Crossen re-joined the meeting at 9:27 a.m.

**3. Chairman’s Report & Activities**

**3a. Agenda Additions / Other Business** – Nothing at this time.

2b

2

**3b. Minutes: January 5, 2021**

**C. Yunker made a motion to approve the January 5, 2021 minutes; the motion was seconded by A. Vanderhoof. Roll call resulted as follows:**

- P. Zelif - Yes
- C. Klotzbach - Yes
- C. Yunker - Yes
- A. Vanderhoof- Yes

**The item was approved as presented.**

**4. Discussions / Official Recommendations to the Board:**

**4a. Phillips Lytle Proposal – STAMP Main Substation** – The proposal from Phillips Lytle is to provide legal, regulatory, and overall planning support from their energy law and consulting practice at Phillips Lytle. This is to foster completion of the design and engineering of the STAMP Main substation and related interconnection studies as well as to advance necessary ownership, operations and maintenance, regulatory and pricing models to enable the bidding, construction and operations of the 345V to 115V main substation at STAMP.

Fund commitment: Not to exceed \$40,000 from Empire State Development's GCEDC STAMP Capital (Project #132,367)

**A. Vanderhoof made a motion to recommend to the full Board approval of the Phillips Lytle proposal not to exceed \$40,000; the motion was seconded by C. Klotzbach. Roll call resulted as follows:**

- P. Zelif - Yes
- C. Klotzbach - Yes
- C. Yunker - Yes
- A. Vanderhoof- Yes

**The item was approved as presented.**

**4b. Project Gateway SEQR** – M. Masse and A. Walters provided an update on SEQR concerning Project Gateway. The GCEDC was lead agency when the original Environment Impact Study (EIS) was completed on the STAMP site in 2012. Since the original EIS, there have been additional updates and the GCEDC remained lead agency for these as well. On January 4, 2021, the GCEDC sent letters indicating intent to maintain lead agency status regarding Project Gateway to all interested and involved parties. The GCEDC received two affirmations consenting lead agency status and no other responses. As a result, after 30 days, the GCEDC is lead agency. As lead agency the GCEDC is required to evaluate whether there are adverse environmental impacts because of Project Gateway that have not been previously evaluated in the STAMP environmental record. After careful review, it was determined that there are no significant adverse environmental impacts that would be created by this project that have not been previously analyzed. No mitigation is necessary if Project Gateway commits to the best practices outlined in the EIS. The GCEDC is in a position to adopt the resolution included with Committee and Board materials.

**DRAFT**

Resolution No. 02/2021 – 02

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPEMNT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT CONCERNING PROJECT GATEWAY - PROPOSED FUTURE USE OF A PORTION OF THE WESTERN NEW YORK SCIENCE & TECHNOLOGY ADVANCED MANUFACTURING PARK

**P. Zeliff made a motion to recommend to the full Board the approval of Resolution #02/2021-02 as presented; the motion was seconded by C. Yunker. Roll call resulted as follows:**

P. Zeliff - Yes  
A. Young - Yes  
C. Yunker - Yes  
A. Vanderhoof- Yes

**The item was approved as presented.**

**5. Adjournment**

As there was no further business, C. Yunker made a motion to adjourn at 9:39 a.m., seconded by C. Klotzbach and passed unanimously.

Mark Masse

**STAMP Committee  
March 2, 2021**

**Approval of purchase of 805 Lewiston Road**

**Discussion:** During the course of finalizing the design and engineering of the 6 mgd water coming to the STAMP site from Niagara County, the hydraulic analysis stated that a pump station would be needed to keep the water moving at a sufficient pressure and that pump station would need to be located near the Genesee/Niagara County line. In analyzing the properties in the area, there was a very limited number of options as a lot of the land in that area is owned by the USFWS or NYSDEC, which would take years to secure and become costly for any potential wetland impacts. It was noticed that there was one residence, 805 Lewiston Road, that was currently listed for sale on Zillow. The list price was \$69,900, the GCEDC made an offer of \$52,500. The owner countered with \$57,500 which is what staff is seeking approval on today. The house is currently vacant.

**Fund Commitment:** Not to exceed \$57,500 (plus or minus any closing adjustments) for the acquisition to be covered under the \$33 million. The not to exceed amount of the legal fees is listed in the authorizing resolution.

**Board Action Request:** Approval of purchase of 805 Lewiston Road for STAMP.

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency") was convened in public session at 99 MedTech Drive, Suite 106, Batavia, New York 14020, on March \_\_\_\_, 2021, at \_\_\_\_ pm local time.

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

PRESENT:

Peter Zelif, Chairman  
Matthew Gray  
Paul Battaglia  
Craig Yunker  
Todd Bender  
Amy Vanderhoof  
Chad Klotzbach

ABSENT:

THE FOLLOWING PERSONS WERE ALSO PRESENT:

RESOLUTION (i) TAKING OFFICIAL ACTION TOWARD AND APPROVING THE ACQUISITION FOR ECONOMIC DEVELOPMENT PURPOSES OF THE REAL PROPERTY WITH THE TAX MAP PARCEL NO. 6.-1-8.12 AND ANY IMPROVEMENTS THEREON LOCATED IN GENESEE COUNTY, NEW YORK AND LOCATED AT 805 LEWISTON ROAD, ALABAMA, NEW YORK (THE "PROPERTY"), (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE CONTRACT AND RELATED DOCUMENTS WITH RESPECT TO THE ACQUISITION OF THE PROPERTY ("CONTRACT"), (iii) AUTHORIZING THE EXPENDITURE OF THE NECESSARY FUNDS OF THE AGENCY WITH RESPECT TO THE ACQUISITION OF THE PROPERTY, AND (iv) AUTHORIZING THE TAKING OF OTHER ACTION IN CONNECTION THEREWITH.

WHEREAS, the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Center ("GCEDC"), in conjunction with the Genesee Gateway Local Development Corporation ("GGLDC"), the non-profit real estate affiliate of the GCEDC (collectively, "Agency"), have been working for more than a decade on the development of the Western New York Science & Technology Advanced Manufacturing Park ("STAMP"), an advanced manufacturing technology campus on approximately 1,262 acres located on the west side of New York State Route 63/77, approximately five miles north of the I-90/New York State Thruway ("STAMP Site") in the Town of Alabama, New York ("Town"), and

WHEREAS, the Agency is authorized and empowered by the provisions of the Chapter 1030 of the Laws of 1969 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 71 of the 1972 Laws of New York, as amended, constituting Section 895-e 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, renovating, improving, maintaining, equipping and furnishing of commercial 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, the Agency is now considering whether to purchase the Property pursuant the Contract in relation to STAMP (the "Project"); and

WHEREAS, in 2010, pursuant to the State Environmental Quality Review Act ("SEQR"), the Agency commenced preparation of a generic environmental impact statement consisting of the Draft Generic Environmental Impact Statement ("DGEIS") accepted by the Agency on April 14, 2011, the Final Generic Environmental Impact Statement ("FGEIS") accepted by the Agency on January 19, 2012, as well as the public comments on the DGEIS received at the May 12, 2011, public hearing and during the public comment period which was conducted from April 21, 2011, through June 23, 2011. (Collectively, the DGEIS and the FGEIS are referred to as the "STAMP GEIS"); and

WHEREAS, the purposes of the STAMP GEIS were to identify and evaluate the potential significant adverse environmental impacts of STAMP, compare the reasonable alternatives, and, where applicable, to identify reasonable mitigation measures to reduce the effect of those impacts to the maximum extent practicable, while weighing the substantial potential social and economic benefits of STAMP; and

WHEREAS, the GCEDC, as lead agency, issued a written Findings Statement based on the STAMP GEIS on March 12, 2012 ("2012 GCEDC Findings") approving STAMP and committing to undertake it; and

WHEREAS, the Agency prepared a smart growth impact statement ("SGIS") for STAMP pursuant to the State Smart Growth Public Infrastructure Policy Act separately from the STAMP GEIS in February, 2012; and

WHEREAS, in 2016 and 2020, a number of changes were made to STAMP which necessitated further environmental review and such review was undertaken by the Agency; and

WHEREAS, Amended Findings Statements were issued by the Agency in 2016 and 2020 (the 2012 GCEDC Findings and the Amended Findings issued in 2016 and 2020 are, collectively, the "STAMP Findings"); and

WHEREAS, the Amended Findings Statement issued in 2020 included an analysis of the construction of a new water main ("Water Main") of approximately 23,000 linear feet to be installed along the Lewiston Road right of way between the Genesee County line with Niagara County and the STAMP Site; and

WHEREAS, consistent with the STAMP 6 MDG Water Basis of Design Report ("Water BODR") prepared by CPL dated June 2020, the acquisition of the Property will allow the Agency to locate a water pump station on the Property in order to service the STAMP Site; and

WHEREAS, the Agency concluded in the Amended Findings Statement issued in 2020 that the construction of the Water Main, along with the associated acquisition of land and development of related facilities, are adequately addressed in the STAMP Findings and STAMP GEIS; and

WHEREAS, the Agency has determined to acquire the Property for STAMP; and



WHEREAS, the Agency now desires to make its determination to proceed with the acquisition of the Property, all subject to the terms hereof; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that the Project is consistent with the corporate purposes of the Agency, will preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Genesee County, New York, will improve their standard of living and will prevent unemployment and economic deterioration.

Section 2. Having considered the STAMP Findings and STAMP GEIS, and having considered the relevant environmental impacts, facts and conclusions relied upon to meet the requirements of 6 N.Y.C.R.R. § 617.11, and having weighed and balanced the relevant impacts with social, economic and other considerations, the Agency recertifies that:

(i) The requirements of 6 N.Y.C.R.R. Part 617 have been met; and

(ii) Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the Project remains one which avoids or minimizes adverse environmental effects to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Section 3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Agency's President and Chief Executive Officer, Senior Vice President of Operations, Procurement Officer and the staff of the Agency with respect to the Project, including, without limitation, (a) the execution and delivery of any documents, instruments and agreements heretofore executed or delivered by the Agency related thereto, (b) those actions required to ensure full compliance with the requirements of the Act and applicable laws that relate to the Project, and (c) the appointment of the law firm of Phillips Lytle LLP, as Special Counsel to the Agency with respect to all matters in connection with the Project.

Section 4. The Agency hereby further determines to proceed with the Project and authorizes the Agency's Chairman, President and Chief Executive Officer, and the Senior Vice President of Operations, acting individually or jointly, to (a) negotiate, execute and deliver the Contract and all other documents, instruments and agreements as such officer(s) may deem advisable or necessary, which are not inconsistent with the intent and substance of this Resolution, to (i) acquire the Property, and (ii) pay, or finance the payment of the purchase price of the Property and all related costs (collectively, the "Project Documents"), the execution and delivery of such Project Documents by the Agency being on such terms and conditions as such officer(s) shall deem necessary or advisable, and (b) do all things necessary, convenient or appropriate for the accomplishment thereof. The execution and delivery of the Project Documents by any one of said officers shall be conclusive evidence of due authorization and approval. In addition, where appropriate, the Secretary (or Assistant Secretary) of the Agency is

hereby authorized to affix the seal of the Agency to any such Project Documents and to attest the same.

Section 5. The Agency hereby further authorizes the expenditure of up to \$7,250.00 of funds of the Agency with respect to services necessary to facilitate the acquisition of the Property, including but not limited to title examination, title insurance, recording fees and other closing costs, and legal fees.

Section 6. The Agency hereby determines that it has complied with its Procurement Policy and Guidelines (the "Policy"). The Center's Procurement Officer has determined that the Property is a "Sole Source Good or Service" as set forth in the Policy. Pursuant to Section 7.3(2) of the Policy, the Center hereby determines that the Property is such a Sole Source Good or Service and that procurement of same need not be pursuant to the Competitive Quotation process set forth in the Policy. The Procurement Officer has satisfactorily explained to the Center in Executive Session the procurement process undertaken in connection with the Contract, including the fact that the purchase price provided for in the Contract exceeds the fair market value of the Property due to, among others, the following factors: avoidance of the cost and delay of an eminent domain procedure, the value of the Property as part of the STAMP property assemblage, and the fact that acquisition will result in the displacement of the family currently living on the Property which family will have to establish a new household elsewhere.

Section 7. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Project Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution and the Project Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in any of the Project Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity, and neither the members of the Agency nor any officer executing any of the Project Documents shall be liable personally on any of the Project Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 8. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Project Documents, to execute and deliver all such additional certificates, instruments, agreements 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, convenient or appropriate to effect the

purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Project Documents to which the Agency is a party or which are binding on the Agency.

Section 9. The Agency recognizes that due to the unusual complexities of the Project it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency's Chairman, President and Chief Executive Officer, and the Senior Vice President of Operations, acting individually or jointly, are hereby authorized to approve modifications to the terms approved herein which are not inconsistent with the intent and substance of this Resolution, such approval to be conclusively evidenced by the execution by any one of such officers of documents, instruments or agreements containing such modifications.

Section 10. The Chairman, President and Chief Executive Officer, and the Senior Vice President of Operations, acting individually or jointly, are hereby authorized to do such further things or perform such further acts as may be necessary, convenient or appropriate to implement the provisions of this Resolution.

Section 11. This Resolution shall take effect immediately.

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

	<i>Yea</i>		<i>Nay</i>		<i>Absent</i>		<i>Abstain</i>	
Peter Zeliff	[	]	[	]	[	]	[	]
Matthew Gray	[	]	[	]	[	]	[	]
Paul J. Battaglia	[	]	[	]	[	]	[	]
Craig Yunker	[	]	[	]	[	]	[	]
Todd Bender	[	]	[	]	[	]	[	]
Amy Vanderhoof	[	]	[	]	[	]	[	]
Chad Klotzbach	[	]	[	]	[	]	[	]

The Resolution was thereupon duly adopted.

**CERTIFICATION**

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

I, the undersigned [Asst.] Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March \_\_\_\_ 2021, 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 set forth 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, except for the Executive Session, 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 and said Executive Session.

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 March, 2021.

\_\_\_\_\_  
Secretary

**Review of Purchase and Sale Agreement for STAMP Property**

**Discussion:** The GCEDC has received a Purchase and Sale Agreement from a potential project to acquire approximately 29.884 for tax parcel 10.-1-41 and part of 10.-1-42 for \$2,091,880 as well as a right of first refusal on 26.764 acres of tax parcel 10.-1-43.12.

**Fund Commitment:** Legal fees to Harris Beach not to exceed \$25,00.00 based on time and billing for the transaction.

**Committee Action Request:** Recommend approval of Purchase and Sale Agreement with right of first refusal and payment of legal fees in connection with closing.

**AUTHORIZING RESOLUTION**  
*(Purchase and Sale of Real Property – Plug Power Inc.)*

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, \_\_\_\_\_, 2021.

The following resolution was duly offered and seconded, to wit:

Resolution No. \_\_\_/2021 - \_\_\_\_\_

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") AUTHORIZING (i) THE SALE OF CERTAIN AGENCY OWNED REAL PROPERTY TO PLUG POWER INC., OR ITS PERMITTED ASSIGNS (ii) THE EXECUTION OF A PURCHASE AND SALE AGREEMENT, AND (iii) A DEED, AND RELATED DOCUMENTS IN CONNECTION WITH THE CLOSING OF THE PURCHASE AND SALE OF THE REAL PROPERTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, among other property, the Agency owns approximately 97.7 acres of vacant land located at Crosby Road, in the Town of Alabama, Genesee County, New York designated with tax account number 10.-1-42 and approximately .87 acres of vacant land located at Crosby Road, in the Town of Alabama, Genesee County, New York designated with tax account number 10.-1-41 (together, the "Primary Land"); and

WHEREAS, **PLUG POWER INC.** and its permitted assigns (the "Company") has offered to purchase a portion of the Primary Land (29.884± acres) in connection with a certain project to be undertaken by the Company (the "Project") thereon pursuant to the terms and conditions of that certain Purchase and Sale Agreement, the form of which is attached hereto as Exhibit A (the "Purchase and Sale Agreement"); and

WHEREAS, among other property, the Agency also owns approximately 182.1 acres of vacant land located at Judge Road, in the Town of Alabama, Genesee County, New York designated with tax account number 10.-1-43.12 (the "Judge Road Land"); and

WHEREAS, the Company also wishes to enter into a Right of First Refusal with regard to the potential purchase of a portion of the Judge Road Land (26.764± acres; the "ROFR Land" and

together with the Primary Land, the "Land") in connection with the Project and pursuant to the terms and conditions of the Purchase and Sale Agreement; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act ("SEQR") the Agency, in conjunction with the Genesee Gateway Local Development Corporation ("GGLDC"), as lead agency pursuant to SEQR, has reviewed the Project proposed upon the acquisition of the Primary Land and the potential acquisition of the ROFR Land as set forth in the Purchase and Sale Agreement, which is a Type I action, and has determined that the Project has met the requirements of 6 N.Y.C.R.R. Part 617 and consistent with the social, economic and other essential considerations from among reasonable alternatives available, the Project avoids or minimizes adverse environmental effects to the maximum extent practicable and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable all as more specifically set forth in that certain resolution of the Agency pursuant to SEQR certified by the Secretary of the Agency on February 4, 2021 and attached hereto and made a part hereof as Exhibit A; and

WHEREAS, the Agency desires to adopt a resolution authorizing (i) the sale of the Primary Land to the Company (ii) the execution of the Purchase and Sale Agreement, (iii) the granting of the Right of First Refusal with respect to the ROFR Land, and (iv) execution of deed(s) and other related documents in connection with the purchase and sale of the Primary Land and the granting of a Right of First Refusal with respect to the ROFR Land (the "Closing Documents"); and

WHEREAS, the Purchase and Sale Agreement in connection therewith has been negotiated and is presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The above recitals are incorporated herein and made a part hereof.

Section 2. The Agency is hereby authorized to sell the Primary Land to the Company and grant a Right of First Refusal with respect to the ROFR Land pursuant to the terms and conditions of the Purchase and Sale Agreement.

Section 3. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized to execute the Purchase and Sale Agreement and the Closing Documents in connection with the closing of the purchase and sale of the Primary Land and the granting of the Right of First Refusal with respect to the ROFR Land.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such 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



resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 5. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) not to exceed \$25,000.00 based upon time and billing and subject to no title, governmental approval and/or environmental issues and no litigation arising in connection with the purchase and sale of the Land.

Section 6. These Resolutions 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:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Peter Zeliff	[ ]	[ ]	[ ]	[ ]
Matthew Gray	[ ]	[ ]	[ ]	[ ]
Paul Battaglia	[ ]	[ ]	[ ]	[ ]
Craig Yunker	[ ]	[ ]	[ ]	[ ]
Todd Bender	[ ]	[ ]	[ ]	[ ]
Amy Vanderhoof	[ ]	[ ]	[ ]	[ ]
Chad Klotzbach	[ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

**CERTIFICATION**

*(Purchase and Sale of Real Property – Plug Power Inc.)*

STATE OF NEW YORK                    )  
COUNTY OF GENESEE                ) ss.:

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on \_\_\_\_\_, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Secretary

**EXHIBIT A**

**Form of Purchase and Sale Agreement**

(Attached Next Page)

**PURCHASE AND SALE CONTRACT ("Contract")  
FOR VACANT LAND**

Contract Date: \_\_\_\_\_, 2021

**PURCHASER(S):** **Plug Power Inc.**, a Delaware corporation with an address at 968 Albany Shaker Road, Latham, New York 12110, or its Permitted Assigns

**SELLER(S):** **Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center**, a New York public benefit corporation with an address at 99 MedTech Drive, Batavia, NY 14020

Purchaser offers to purchase the property described below from Seller, and on the Date of Acceptance Seller agrees to sell the property described below to Purchaser, on the following terms:

**1. PROPERTY DESCRIPTION:** Part of land owned by the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, approximate size of 29.884 acres. The land included in the sale is depicted per attached Exhibit "A" and consists of tax parcel 10.-1-41 and part of 10.-1-42 (tax parcel 10.-1-42 to be subdivided at Seller's sole cost and expense) situated in the Town of Alabama (the "Land"). The actual acreage to be purchased by the Purchaser from the Seller shall be determined based on an accurate survey of the Land to be paid for by the Seller, and approved by Purchaser, pursuant to this Contract. The Property consists of (a) the Land, (b) all improvements, fixtures and attachments located on the Land, if any, (c) all rights, privileges, easements and appurtenances related thereto, and (d) any permits, approvals or other rights relating to the ownership, use and operation of the Land and improvements, fixtures and attachments located on the Land.

**1.A RIGHT OF FIRST REFUSAL.** Seller also grants Purchaser a right of first refusal to purchase the land described in Exhibit "B" (the "ROFR Land") together with all improvements, fixtures and attachments located on the ROFR Land, if any, all rights, privileges, easements and appurtenances related thereto, and any permits, approvals or other rights relating to the ownership, use and operation of the ROFR Land and improvements, fixtures and attachments located on the ROFR Land (collectively, the "ROFR Property"). If at any time during the ROFR Term (defined below) Seller receives a bona fide purchase offer for all or any portion of the ROFR Property on terms acceptable to Seller and the Seller intends to accept such offer (the "Third Party Offer") and the Seller conditionally accepts such offer subject to this ROFR, Seller will give a complete written copy of the Third Party Offer to Purchaser. Purchaser will have the right to elect to purchase the ROFR Property that is the subject of the Third Party Offer at the price and on the terms contained in the Third Party Offer by written notice to Seller given within fifteen (15) days after Purchaser's receipt of the Third Party Offer. If Purchaser fails to elect to purchase the ROFR Property that is the subject of the Third Party Offer within such fifteen (15) day period, Seller shall be free to sell the ROFR Property that was the subject of the Third Party Offer to the purchaser identified in the Third Party Offer for a purchase price of not less than 90% of the purchase price set forth in the Sale Notice and otherwise upon the terms and conditions set forth in the Third Party Offer (or other terms and conditions no more favorable to the purchaser). In all other events, Seller must again comply with the provisions of this Section 1.A before selling such ROFR Property to any party. Notwithstanding the foregoing, Seller's right of first refusal

under this Section 1.A shall only apply to any Third Party Offer received by Seller during the twelve year period following the anniversary of the Closing Date (the "ROFR Term"). Any exercise of Purchaser's ROFR shall be accompanied by payment of a deposit, if any, as provided for in the Third Party Offer submitted to the Seller. On the expiration of the ROFR Termination Date, the ROFR, and any and all rights hereunder, shall automatically terminate and Seller may record, in the office of the clerk of the county where the Land is located, a statement under oath that the ROFR has terminated. The recording of such a statement shall be conclusive proof that the ROFR has terminated and is of no further force and effect.

**2. PRICE; AMOUNT AND HOW IT WILL BE PAID:** The purchase price to be paid by the Purchaser to the Seller (the "Purchase Price") shall be \$70,000 per acre with a maximum purchase price of \$2,091,880 and the maximum purchase price shall apply if the size of the Property exceeds 29.884+/- acres based on the updated survey to be provided by the Seller to the Purchaser provided said difference is less than .5 acres.

The Purchaser shall receive a credit at closing for any deposit made hereunder. The balance of the Purchase Price, as adjusted pursuant to this Contract, shall be paid as follows: (Check and complete applicable provisions.)

- (A) By official bank draft, wire or certified check at closing.  
 (B) Other

**3. CONTINGENCIES:** Purchaser makes this offer subject to the contingencies set forth in this Section 3 of the Contract. If any of these contingencies have not been satisfied or waived by the last day of the month that is six (6) months after the Date of Acceptance (as hereinafter defined) (as extended pursuant to this Contract, the "Contingency Period") to the satisfaction of the Purchaser, then the Purchaser shall have the right at its sole discretion to cancel this Contract or to extend the Contingency Period for an additional two (2) months by providing the Seller with written notice of the extension of the Contingency Period so long as the such notice is provided to the Seller prior to the expiration of the initial six (6) month Contingency Period. If the Contingency Period expires (including an extension of the Contingency Period as exercised by the Purchaser pursuant to the preceding sentence), then either Purchaser or Seller may cancel this Contract by written notice to the other. If Purchaser shall not have notified Seller of its satisfaction of the contingencies set forth in this Section 3 of the Contract prior to the expiration of the Contingency Period (including any extension by the Purchaser), then the Contingency Period shall be extended until the fifth (5th) business day following Purchaser's receipt of Seller's written notice requesting Purchaser to waive the contingency set forth herein and to proceed to closing. Should Purchaser fail to waive this contingency at the end of the Contingency Period, as extended per the preceding sentence, this contingency shall be deemed to have not been satisfied and the Contract shall terminate and neither party shall have any further liability hereunder. Subject to Section 16 of the Contract, the Seller expressly agrees to allow Purchaser and/or its agents, consultants and employees with access to the Property for the purpose of any testing activities the Purchaser determines are necessary during the contingency periods as defined in this Section 3 of the Contract. (Check and complete applicable provisions.)

(A) **Development Approvals.** This offer and Purchaser's obligations are contingent upon Purchaser obtaining all requisite approvals and permits, exclusive of a building permit, from any governing body having jurisdiction with respect to the construction, development and use of the Property for the Purchaser's intended use of the Property as a green hydrogen production facility of a size, capacity and

other characteristics satisfactory to Purchaser (the "Required Approvals"). Purchaser shall have until the last day of the Contingency Period, to obtain the Required Approvals in final, non-appealable form, upon conditions acceptable to the Purchaser, in its sole discretion. Purchaser and Seller agree to make joint application(s) during the Contingency Period and diligently pursue such application(s) in a cooperative manner.

X (B) **Subdivision / Land Separation Approval.** This offer and Purchaser's obligations are contingent upon Seller obtaining all requisite approvals from any governing body having jurisdiction for subdivision or land separation approval of the Property (the "Subdivision Approval"). Purchaser and Seller agree to promptly make joint application for Subdivision Approval and diligently pursue the application. The final approval, upon conditions acceptable to Purchaser and Seller, shall be obtained on or before the last day of the Contingency Period. This offer and Purchaser's obligations are also contingent upon Seller obtaining approval of the Land to be designated as a separate tax parcel for real estate taxes which shall be effectuated upon the filing of the subdivision plat map.

X (C) **Financing Contingency.** This offer and Purchaser's obligations are subject to Purchaser obtaining and accepting financing suitable to its intended use, in its sole discretion, during the Contingency Period. For purposes of the Financing Contingency, acceptable financing shall include, but not be limited to assistance, if any, from the Genesee County Industrial Development Agency (the "GCIDA") for property tax abatement, mortgage tax exemption and such other governmental incentives and grants that the Purchaser determines are necessary, in its sole discretion.

- (D) **[Intentionally Omitted]**

X (E) **Environmental Contingency.** This Contract and Purchaser's obligations are expressly subject to the completion of an environmental audit to the satisfaction of the Purchaser, including a Phase I Environmental Site Assessment at Purchaser's expense, within the Contingency Period, and the results of such environmental audit being satisfactory in the Purchaser's sole discretion. The Seller shall provide the Purchaser with complete copies of any documentation it possesses relating to the environmental conditions of the Premises upon request.

X (F) **Project Level Contingencies.** (notate below as identified and agreed)

This offer, and Purchaser's obligations, are subject to an executed substation development agreement between Purchaser, Seller and NYPA in form and substance satisfactory to Purchaser.

This offer, and Purchaser's obligations, are subject to the Title Company agreeing to insure title to the Real Property, at Purchaser's sole cost and expense, in an amount not less than the Purchase Price by standard ALTA Forms and at ordinary premiums, free and clear of all encumbrances and other matters other than Permitted Exceptions, in the name or Purchaser (or its designee) after delivery of the Deed, which title insurance policy shall contain such affirmative insurance and endorsements as Purchaser shall reasonably require.

This offer, and Purchaser's obligations, are subject to all representations and warranties of Seller in this Agreement being true when made and as of the Closing Date.

This offer, and Purchaser's obligations, are subject to: (1) following the date of the Title Evidence, there shall have occurred no change in (i) the marketability of title, (ii) title to the Property or survey matters not previously disclosed in the Title Evidence, or (iii) any other fact or condition which would,

in Purchaser's reasonable judgment, prohibit or impair the development, maintenance and operation of the Property green hydrogen production facility of a size, capacity and other characteristics satisfactory to Purchaser with direct, contiguous access (ingress and egress) from and to the Land and the adjacent public ways and necessary infrastructure; and (2) no reports or studies obtained by Purchaser disclosed the presence of threat of Hazardous Materials at, or in the vicinity of, the Property; and (3) Seller having performed all covenants and obligations required by this Agreement to be performed by Seller on or prior to the Closing Date. Items (1)(iii) and (2) shall either be deemed either satisfied or waived by Purchaser on or before the expiration of the Contingency Period should the Purchaser fail to exercise its right to terminate this Contract prior thereto.

At expiration of the Contingency Period, as may be extended as set forth herein, the Deposit shall become non-refundable in the event Purchaser breaches its obligation to close but applicable to the Purchase Price in the event the transaction closes.

Purchaser may elect, in its sole and absolute discretion, but shall not be obligated to, to waive any contingencies set forth in this Agreement.

**4. CLOSING DATE, PLACE, AND POSSESSION:** Transfer of title shall take place at the Genesee County Clerk's Office or at the offices of the Seller's attorney on the date selected by Purchaser and set forth in the a written notice to Seller which is no less than ten (10) days after delivery of such notice to Seller (the "Closing Date"); provided that Closing Date designated by Purchaser is no later than the date that is *[thirty (30)]* days following the last day of the Contingency Period (or, if such day is not a business day, the first business day following such date prior to \_\_\_\_\_, 2021). Notwithstanding the foregoing, Purchaser may elect by delivering notice to Seller to conduct the transfer of title and delivery of the balance of the Purchase Price (the "Closing") through an escrow with the title insurance company selected by Purchaser to insure the Property (the "Title Company") so that it will not be necessary for any party to physically attend the Closing (in which event the items to be delivered by Seller or Purchaser in accordance with this Contract for Closing shall be delivered to Title Company on or before the Closing Date).

**5. TITLE AND RELATED DOCUMENTS:** Seller shall provide the following documents in connection with the sale:

- A. **Deed.** Seller will deliver to Purchaser at closing a properly signed and notarized Bargain and Sale Deed with covenant against grantor's acts and subject to trust fund provisions of Section 13 of the Lien Law, in form and substance reasonably satisfactory to the parties.
- B. **Bill of Sale and General Assignment.** Seller will deliver to Purchaser at closing a properly signed bill of sale and general assignment instrument transferring all of Seller's right, title and interest in any Property other than the Land, in form and substance reasonably satisfactory to the parties.
- C. **Abstract, Bankruptcy and Tax Searches.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days from the Contract Date, at Purchaser's expense, fully guaranteed tax, title and United States Court Searches dated or re-dated after the date of this Contract with a local tax certificate for Town, Village or City and School District taxes, if any (collectively, with the Instrument Survey Map, the "Title Evidence"). Purchaser will pay for continuing such searches to and including the day of closing.

- D. **Instrument Survey Map.** The Seller shall furnish at Seller's cost an instrument survey of the Property being purchased and shall have markers placed on the angle points and pins on the corners ("the Instrument Survey Map"). The Instrument Survey Map shall be prepared by a licensed surveyor and dated or re-dated after the date of this Contract. The Instrument Survey Map shall show acreage inclusive of the rights of way, if any, show all recorded encumbrances, meet all of the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys and be certified as an ALTA/NSPS survey, and shall be furnished to the parties and their attorneys within thirty (30) calendar days from the date of this Contract. The Instrument Survey Map shall be certified to meet the standard requirements of the Genesee County Bar Association and, if applicable, meet the filing standards for subdivision as set forth by the responsible agency of the county in which the Property is located.
- E. **Corporate Documents.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days before the Closing Date, at Seller's expense, a current Certificate of Good Standing and shall deliver at or prior to Closing evidence reasonably satisfactory to Purchaser and the Title Company of Seller's authority to convey the Property.
- F. **Tax Bills.** Seller shall furnish copies of receipted real estate tax bills for the Premises for the past twelve (12) months within twenty (20) calendar days from the Date of Acceptance.
- G. **Intentionally Omitted.**
- H. **Business Park Estoppel.** Seller shall deliver an estoppel certificate dated no earlier than ten days prior to Closing from the association or community or other organization constituting the Business Park certifying (a) that neither Seller nor the Property is in default under the documents creating, governing or relating to the Business Park, (b) the amount of the common area charges, association fees or other community fees or assessments for the Property, and (c) that all outstanding common area charges, association fees or other community fees or assessments have been paid in full.
- I. **Notice of Right of First Refusal.** Seller will deliver to Purchaser at closing a properly signed and notarized Memorandum of Right of First Refusal.
- J. **Other Closing Documents.** Seller shall deliver such other documents or items reasonably necessary to facilitate the Closing, including customary affidavits sufficient for the Title Company to delete any exceptions for parties in possession, mechanics' or materialmen's liens or other items which do not constitute Permitted Exceptions from Purchaser's title insurance policy.
- K. **Other Documents.** Seller shall also furnish copies of all appraisals, plans, drawings, specifications, environmental impact statements and other written documentation affecting or relating to the Property, within twenty (20) days of the Date of Acceptance.

6. **MARKETABILITY OF TITLE:**

- A. The deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the Property in fee simple, free and clear of all liens and encumbrances. However, Purchaser agrees to accept title to the Property subject to: (i) restrictive covenants of record common to the tract or subdivision of which the Property is a part, provided these



restrictions have not been violated and would not be violated by the Purchaser's anticipated improvements or uses; (ii) the lien of current real estate taxes not due and payable; and (iii) public utility easements along lot lines as long as the Purchaser has determined those easements do not interfere with any buildings now on the Property or with any improvements Purchaser may construct (the "Permitted Exceptions"). Seller agrees to furnish any documents required by federal or state laws for transfer of title to real property.

**B.** THE PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING CONVEYED BY SELLER IN "AS-IS" CONDITION, AND THAT PURCHASER IS BUYING THE PROPERTY BASED SOLELY ON PURCHASER'S KNOWLEDGE OF THE PROPERTY AND NOT IN RELIANCE ON ANY REPRESENTATION MADE BY SELLER OR ANY EMPLOYEE OR AGENT OF SELLER, EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS CONTRACT. SELLER EXPRESSLY DISCLAIMS, AND PURCHASER ACKNOWLEDGES SUCH DISCLAIMER OF ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PHYSICAL CONDITION OR ENVIRONMENTAL COMPLIANCE OF THE PROPERTY NOT EXPRESSLY SET FORTH HEREIN. THE REPRESENTATIONS AND DISCLAIMER CONTAINED IN THIS CONTRACT SHALL SURVIVE CLOSING.

7. **OBJECTION TO TITLE:** If Purchaser raises a valid written objection to Seller's title, other than Permitted Exceptions, within thirty (30) days of receipt of all Title Evidence, which indicates that the title to the Property is unmarketable or is subject to any encumbrances or restrictions not constituting Permitted Exceptions, Seller may cancel this Contract by giving prompt written notice of cancellation to Purchaser and Purchaser's Deposit shall be returned. However, if Seller is able to and agrees in writing to cure the title objection on or before the Closing Date, then this Contract shall continue in force until the closing date, subject to the Seller curing the title objection at Seller's expense. If Seller fails to cure the title objection on or before the Closing Date, Purchaser may cancel this Contract by giving prompt written notice of cancellation to Seller, Purchaser's Deposit shall be returned and the parties shall have no further obligation to one another except for those obligations which explicitly survive termination of this contract.

8. **RECORDING COSTS, MORTGAGE TAX, TRANSFER TAXES AND CLOSING ADJUSTMENTS:** Seller will pay the real property transfer tax and real property gains tax, if applicable. Purchaser will pay for recording the deed and the mortgage, and for the entire mortgage tax subject to any terms contained in an incentive package, if any, from GCIDA. The parties agree to cooperate in the execution and timely filing of all necessary documentation to determine any real property transfer gains tax. The following, as applicable, will be prorated and adjusted between Seller and Purchaser as of the date of closing, excluding any delinquent items, interest and penalties: current taxes or special district fees computed on a fiscal year basis, rent payments, fuel oil on the Property, water charges, pure water charges, sewer charges, current common charges or assessments. If there is a water meter at the Property, Seller shall furnish an actual reading to a date not more than 30 days before the closing date set forth in this Contract. At closing, the water charges and any sewer rent shall be apportioned on the basis of such actual reading.

9. **ZONING:** Seller represents that the Property is zoned for use as a Technology District 1 which allows for Technology Manufacturing defined as follows:

Technology Manufacturing: Establishments engaged in the use, research and development, demonstration, manufacturing and/or distribution of advanced technologies in modern industries such as energy, communications, information and computing technologies, pharmaceuticals and life sciences, including but not limited to semiconductors and semiconductor devices, computing technology and data centers, flat panel display technology and components including light emitting diodes and liquid crystal display, renewable energy, solar photovoltaics, and any related enabler technologies that employ advanced manufacturing techniques and/or resources such as micro-technology or nanotechnology or other manufacturing, industrial or commercial uses appropriate to STAMP.

Based on the Purchaser's intended use as of the Land as a Hydrogen Production Facility, as described in their Application for Financial Assistance to the Seller, is a permitted use.

**10. RISK OF LOSS:** Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Purchaser may cancel this Contract without any further liability to Seller. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

**10.A CONDEMNATION.** If, prior to the Closing Date, any portion of or interest in the Property shall be taken or is in the process of being taken by exercise of the power of eminent domain, or if any governmental authority notifies Seller prior to the Closing Date of its intent to take or acquire any portion of or interest in the Property (each a "Taking"): (a) Seller shall promptly give Purchaser written notice of such event; and (b) Purchaser shall have the option to terminate this Agreement by providing notice to Seller to such effect on or before the date which is sixty (60) days from Seller's notice to Purchaser of such Taking (and, if the Closing is scheduled to occur prior to the expiration of such sixty (60) day period, Purchaser shall have the right to an extension to the date that is sixty (60) days following Seller's notice to Purchaser of such Taking in order to make its election). If Purchaser elects to terminate in accordance with this Section, Escrow Agent shall return the Deposit to Purchaser, this Agreement shall terminate, and neither Seller nor Purchaser shall have any recourse against the other (except to the extent such recourse arises in connection with a provision of this Agreement which is intended to survive termination). If Purchaser does not timely notify Seller of its election to terminate this Agreement in the event of a Taking, Purchaser shall purchase the Property and pay the Purchase Price, and Seller shall pay over or assign to Purchaser on delivery of the Deed, awards recovered or recoverable by Seller on account of such Taking.

**11. DEPOSIT TO SELLER:** Purchaser shall make a \$62,750.00 deposit ("Deposit") upon signing of the contract to be held in escrow by Seller's attorney Harris Beach PLLC, 99 Garnsey Road, Pittsford, NY 14534. Such Deposit shall be refundable until the expiration of the Contingency Period, as may be extended as set forth herein, at which time it shall become non-refundable unless the Closing fails to occur for any reason other than the default of Purchaser and shall be credited against the Purchase Price at Closing. Should this Contract be terminated by Purchaser prior to the expiration of the Contingency Period, as may be extended as set forth herein, the Deposit shall be refunded to the Purchaser. In the event of Seller's default under this Purchase and Sale Contract, the Deposit shall be paid to the Purchaser as its sole and exclusive remedy.

By signing a copy of this Agreement, Harris Beach PLLC ("Escrow Agent") agrees to be bound by the terms of this Section 11. The Deposit shall be held by Escrow Agent and disbursed in accordance with the following terms:

(a) Escrow Agent shall invest the Deposit in an interest bearing account at a federally insured bank. The interest earned on the Deposit, if any, shall be held with the Deposit and applied as set forth below.

(b) Escrow Agent will deliver the Deposit to Seller or to Purchaser, as the case may be, under the following conditions:

(i) To Seller on the Closing Date if the Closing occurs, with all interest earned thereon credited against the balance of the Purchase Price due from Purchaser to Seller at Closing (or, at Seller's election, if such amount is not credited against the balance of the Purchase Price due from Purchaser to Seller at Closing, the interest shall be delivered to Purchaser by check at Closing);

(ii) Subject to the provisions of subparagraph (c) hereof, to Seller upon receipt of written demand therefor, such demand stating that Seller is entitled to the Deposit or any portion thereof pursuant to this Agreement and specifically setting forth the facts and circumstances underlying the same; or

(iii) Subject to the provisions of subparagraph (c) hereof, to Purchaser upon receipt of written demand therefor, such demand stating that Purchaser is entitled to the Deposit (except for the Independent Consideration) or any portion thereof pursuant to this Agreement and specifically setting forth the facts and circumstances underlying the same.

(c) Upon the filing of a written demand for Deposit by Purchaser or Seller pursuant to subsections (ii) or (iii) of subparagraph (b) of this Section, Escrow Agent shall promptly deliver or mail a copy thereof to the other party. The other party shall have the right to object to the delivery of the Deposit by filing written notice to such objection with Escrow Agent at any time within ten (10) business days after the delivery of such copy to it, but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice, Escrow Agent shall promptly deliver or mail a copy thereof to the party who filed the written demand.

(d) In the event that Escrow Agent shall have received the notice of objection provided for in clause (c) above and within the time therein prescribed, Escrow Agent shall continue to hold the Deposit until (i) Escrow Agent receives written notice from Seller and Purchaser directing the disbursement of said Deposit, in which case, Escrow Agent shall then disburse said Deposit in accordance with said direction, or (ii) in the event of litigation or any other action between Seller and Purchaser, Escrow Agent shall deliver the Deposit to the court in which said litigation, or the court or other forum in which the action is pending, or (iii) Escrow Agent takes such affirmative steps as the Escrow Agent may, in the Escrow Agent's reasonable opinion, elect in order to terminate the Escrow Agent's duties including, but not limited to, deposit in court and an action for interpleader, the costs thereof to be borne by whichever of Seller or Purchaser is the losing party.

(e) Escrow Agent shall comply with all reporting requirements under the Internal Revenue Code of 1986, as amended, or any other legal requirement. Escrow Agent shall not charge a fee for its services as Escrow Agent. Notwithstanding the foregoing, in the event Escrow Agent shall deposit the

Deposit in court in an action for interpleader, the non-prevailing party in such action shall be required to pay Escrow Agent's reasonable legal fees and court costs in connection with such action.

(f) Purchaser acknowledges that Harris Beach PLLC is currently representing Seller as legal counsel in connection with the transactions contemplated by this Contract. Neither the agreement by the parties hereto that Harris Beach PLLC shall act as Escrow Agent, nor any other term of this Contract, nor any other agreement or understanding between or among the parties hereto shall prevent or inhibit, or be construed or interpreted so as to prevent or inhibit, Harris Beach PLLC from serving at any time as legal counsel to Seller or any agent or affiliate of Seller, whether in connection with this Contract or otherwise. Escrow Agent shall be responsible for holding, and disbursing the Escrow Funds pursuant to this Contract, but in no event shall it be liable for any exemplary or consequential damages hereunder when its acts, taken or omitted, are in good faith. The duties and responsibilities of Escrow Agent hereunder shall be determined solely by the express provisions of this paragraph 11 and no other or further duties or responsibilities shall be implied. Escrow Agent shall not have any liability under, nor duty to inquire into the terms and provisions of any agreement or instructions, other than outlined in this paragraph 11.

12. **REAL ESTATE BROKER:** Seller and Purchaser acknowledge that no broker brought about this transaction. Seller and Purchaser warrant and represent that they have not dealt with any other brokers in connection with the sale embraced in this Contract and agree to indemnify and hold each other harmless from the claims of any other brokers for commissions.

13. **RESPONSIBILITY OF PERSONS UNDER THIS CONTRACT; ASSIGNABILITY:** If more than one person signs this Contract as Purchaser, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Purchaser in this Contract. If more than one person signs this Contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. Purchaser shall not have the right to assign its rights, duties and obligations pursuant to this Contract or any of its rights hereunder without prior written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed; provided, however, Purchaser shall be permitted to assign this Contract to an affiliate, parent or subsidiary of Purchaser herein ("Permitted Assigns") without obtaining Seller's consent so long as the Purchaser named herein remains fully responsible for the performance of all of Purchaser's obligations under this Agreement. No assignment shall be effective unless and until Purchaser provides Seller with a notice of assignment together with a copy of the applicable assignment and assumption agreement.

14. **ENTIRE CONTRACT:** This Contract when signed by both Purchaser and Seller will be the record of the complete agreement between the Purchaser and Seller concerning the purchase of the Property. No verbal agreements or promises made by either the Seller or the Purchaser shall be binding.

15. **NOTICES.** All notices under this Contract shall be in writing and shall be deemed validly given if sent by certified mail or by overnight delivery via a commercial courier to the addresses specified below or if sent by e-mail to the e-mail address below by either party or its counsel. Any notice issued by or on behalf of the Seller or Purchaser with respect to this Contract must also simultaneously be provided to the counsel for the receiving party to be effective as follows:

Seller:

Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center

Attn: Steven G. Hyde, President and CEO  
99 MedTech Drive  
Suite 106  
Batavia, New York 14020  
E-Mail: \_\_\_\_\_

Counsel for Seller:

F.L. Gorman, Esq.  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Tel: 585.419.8628  
Fax: 585.419.8816  
E-mail: [flgorman@harrisbeach.com](mailto:flgorman@harrisbeach.com)

Purchaser:

Plug Power Inc.  
968 Albany Shaker Road  
Latham, NY 12110  
Attention: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

with a copy to:

Gerard Conway, Esq  
VP, General Counsel and Corp Secretary  
Plug Power Inc.  
968 Albany Shaker Road  
Latham, NY 12110  
518-782-7700 x 1376  
E-Mail: [gconway@plugpower.com](mailto:gconway@plugpower.com)

Counsel for Purchaser:

Goodwin Procter LLP  
100 Northern Avenue  
Boston, MA 02210  
Attn: Bruce Tribush, Esq.  
Tel: (626) 570-1959  
E-Mail: [btribush@goodwinlaw.com](mailto:btribush@goodwinlaw.com)

Any notice so delivered shall be deemed given (i) when delivered or refused by hand during regular business hours, (ii) three (3) days after being sent by United States registered or certified mail, (iii) the next business day if sent by overnight courier service, or (iv) when sent if sent by e mail. Any notice

given by a party to Escrow Agent shall be simultaneously given to the other party. Any notice given by a party to the other party relating to its entitlement to the Deposit shall be simultaneously given to the Escrow Agent. Any party may change its address(es) for receiving notices hereunder by delivering ten (10) days' prior written notice to Escrow Agent and the other party in accordance with this Section.

**16. ACCESS TO PROPERTY/DUE DILIGENCE.** At any time after the date upon which this Contract is executed by both Purchaser and Seller ("Date of Acceptance"), Purchaser may inspect, survey, examine and/or test the Property and conduct such tests thereon as it deems appropriate, including any such non-invasive inspection, surveying, examination, and/or testing required to conduct such activities in support of locating the planned economic development project at the site to and including any activities necessary for the SEQR process, by agent or otherwise. Purchaser acknowledges and agrees that it shall have no right to conduct drilling, soil boring or other invasive testing on the Property without first obtaining Seller's prior written consent, which consent shall be exercised in Seller's sole and absolute discretion and shall be predicated upon Purchaser presenting Seller with a detailed map of the location of where such invasive testing shall be conducted, a description of the nature of such invasive testing and whatever environmental or engineering reports upon which Purchaser is basing its request for such drilling, soil boring or other invasive testing. Purchaser and/or its agents and employees shall have access to the Property at any reasonable time for purposes of making the foregoing inspections on prior reasonable notice to Seller. Unless otherwise agreed to in writing between the Purchaser and Seller, Purchaser shall bear all costs associated with the foregoing inspections and associated activities of the Property performed or conducted by Purchaser, or at the request of Purchaser, by its agent(s) or otherwise. Purchaser agrees to indemnify, defend and hold Seller harmless from all actual suits, causes of action, losses, payments and expenses (including, but not limited to, reasonable attorneys' fees) arising from: (a) any personal injury or property damage to the extent caused by the negligence of Purchaser and/or its representatives, agents, employees and contractors during the inspection of the Property; and (b) any and all mechanics', laborers', materialmen's or other liens asserted against the Property resulting from Purchaser's foregoing inspections, which indemnity shall survive closing or the earlier termination of this Contract. Purchaser agrees to return the Property in as near as possible its condition prior to Purchaser's entry thereon.

**17. INTEREST IN PROPERTY.** Except for the Seller, there are no persons in possession or occupancy of the Property or any part thereof, nor are there any persons who have possessory rights in respect to the Property or any part thereof. Any possessions, occupancy and/or possessory rights of any persons other than Seller, shall be terminated by Seller on or prior to the closing date.

**18. COMMON AREA CHARGES; COMMUNITY FEES.** The common area charges, association fees or other community fees or assessments (including, but not limited to, any charges, dues or fees due in connection with the Business Park) shall not exceed five thousand Dollars (\$5,000) annually. Seller represents and warrants that all documents creating, governing or relating to the association or community or other organization constituting the Business Park are listed in Exhibit "C" and that true, correct and complete copies thereof have been delivered to Purchaser.

**19. APPLICABLE LAW.** This Contract shall be governed by, and construed in accordance with, the laws of the State of New York. The parties further agree that for the purposes of litigation arising between the parties, venue shall be laid in Genesee County Supreme Court. The prevailing party shall be entitled to attorney fees.

20. **COUNTERPARTS.** This Contract may be signed in several counterparts, and/or by execution of counterpart signature pages which may be attached to one or more counterpart, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Contract. Any counterpart delivered by electronic mail or facsimile transmission shall have the same force and effect as an original thereof.

21. **AUTHORITY.** Purchaser certifies to Seller that the execution, delivery and performance by Purchaser of this Contract and the performance of the Purchaser of the transactions contemplated hereunder have been duly authorized by Purchaser and that the individual signing this Contract on behalf of Purchaser has the full authority of Purchaser to enter into this Contract.

22. **ENVIRONMENTAL.** Seller represents and warrants to the best of its actual knowledge without independent investigation or inquiry that (a) it has not received written notice that the Property is in violation of any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Materials (“Environmental Laws”) and (b) Seller has not generated, stored or disposed of any Hazardous Materials at the Real Property, and Seller has no actual knowledge of any previous or present generation, storage, disposal or existence of Hazardous Materials at the Property. Seller further represents and warrants that it will provide any appraisals, plans, drawings, specifications, surveys, engineering reports, environmental studies, environmental impact statements related to the Property in its possession, custody or control within twenty (20) days of the Date of Acceptance. As used herein, the term “Hazardous Materials” means each and every element, compound, chemical, mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision.

23. **FORCE MAJEURE.** Purchaser shall have the right to extend the Contingency Period by the number of days that a Force Majeure Event interferes with Purchaser’s ability to complete Purchaser’s due diligence investigations of the Property and/or pursue Required Approvals and/or pursue or obtain financing, and shall have the right to extend the Closing Date by the number of days that a Force Majeure Event interferes with Purchaser’s ability to consummate the Closing. As used herein, the term “Force Majeure Event” means and refers to any act, occurrence or event that delays, hinders or prevents either Seller or Purchaser from the performance of any act required hereunder by reason of, and outside the reasonable control of Seller or Purchaser, including, without limitation, strikes, lockouts or other labor or industrial disturbances; riot or civil disturbance; order of or delay caused by any government, court or regulatory body claiming jurisdiction (including, without limitation delays in processing or release of necessary permits); act of the public enemy, war, riot, terrorism, sabotage, blockade, embargo; epidemic or pandemic; and lightning, earthquake, fire, storm, hurricane, tornado, flood or other Acts of God or severe adverse weather of unusual duration or volume. The Seller shall have the right to claim Force Majeure. Notwithstanding the foregoing, this paragraph 23 shall not operate to excuse the Purchaser from the payment of any monetary obligations due hereunder.

Seller certifies to the Purchaser that the Seller owns the Property and that the individual signing this Contract on behalf of the Seller has the full authority of the Seller to enter into this Contract, and that the execution, delivery and performance by Seller of this Contract and the transactions contemplated hereunder have been duly authorized by Seller. Seller accepts the offer and agrees to sell on the terms and conditions set forth above.

***[REMAINDER OF PAGE HAS BEEN LEFT INTENTIONALLY BLANK; SIGNATURES ON  
FOLLOWING PAGE]***

3b

13

3a



**GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE  
COUNTY ECONOMIC DEVELOPMENT CENTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

WITNESS: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

**PURCHASER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

WITNESS: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

**ESCROW AGENT:**

Harris Beach PLLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

EXHIBIT "A"

Land

PARCEL A

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Alabama, County of Genesee and State of New York, being part of Lot No. 14, Township 13, Range 4 of the Tonawanda Reservation, bounded and described as follows:

BEGINNING at a point in the centerline of Crosby Road (49.5 feet wide) at the southeast corner of said Lot No. 14; thence N 89°28'47" W along the southerly line of Lot No. 14 a distance of 1636.00 feet to the southwest corner of said Lot No. 14; thence N 01°05'45" E along the westerly line of Lot No. 14 a distance of 981.60 feet to a point, said point being in the approximate centerline of an existing tributary; thence southeast and easterly along the approximate centerline of said tributary the following four (4) courses and distances:

- 1) S 50°22'30" E a distance of 260.77 feet to a point;
- 2) S 87°39'22" E a distance of 831.42 feet to a point;
- 3) S 84°45'09" E a distance of 274.88 feet to a point;
- 4) S 74°21'37" E a distance of 337.35 feet to the centerline of Crosby Road and the easterly line of Lot No. 14;

Thence S 01°05'45" W along the centerline of Crosby Road and the easterly line of Lot No. 14 a distance of 680.00 feet to the point of beginning, containing 29.884± acres more or less.

EXHIBIT "B"

ROFR Land

PARCEL B

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Alabama, County of Genesee and State of New York, being part of Lot No. 15, Township 13, Range 4 of the Tonawanda Reservation, bounded and described as follows:

COMMENCING at a point in the centerline of Crosby Road (49.5 feet wide) at the southeast corner of Lot No. 14; thence N 89°28'47" W along the southerly line of Lot No. 14 a distance of 1636.00 feet to the Point of Beginning, said point of beginning being the southeast corner of Lot No. 15 and also the easterly line of lands conveyed to Gordon L. Lamb and Leslie C. Lamb by deed recorded in the Genesee County Clerk's Office in Liber 689 of Deeds at page 1; thence N 89°39'57" W through the lands so conveyed to Gordon L. Lamb and Leslie C. Lamb by Liber 689, page 1 and along the southerly line of Lot No. 15 a distance of 1028.40 feet to the southeast corner of lands conveyed to Giorgio Pannella by deed recorded in the Genesee County Clerk's Office in Liber 454 of Deeds at page 756; thence N 00°20'03" E along the easterly line of lands so conveyed to Giorgio Pannella a distance of 1290.00 feet to a point, said point being the approximate centerline of an existing tributary; thence southeasterly and easterly through said lands conveyed to Gordon L. Lamb and Leslie C. Lamb by Liber 689, page 1 along the approximate centerline of said tributary the following four (4) courses and distances:

- 1) S 65°35'53" E a distance of 496.89 feet to a point;
- 2) N 73°41'29" E a distance of 94.61 feet to a point;
- 3) S 89°39'57" E a distance of 183.70 feet to a point;
- 4) S 66°40'48" E a distance of 340.43 feet to the easterly line of Lot No. 15 and the easterly line of lands conveyed to Gordon L. Lamb and Leslie C. Lamb by Liber 689, page 1;

Thence S 01°05'45" W along the easterly line of Lot No. 15 and the easterly line of lands conveyed to Gordon L. Lamb and Leslie C. Lamb by Liber 689, page 1 a distance of 981.60 feet to the point of beginning, containing 26.764± acres more or less.

EXHIBIT "C"

Business Park Governing Documents

**There currently is no formal Business Park Organization, handled by the IDA.**

**GCEDC STAMP Project**

**Memo to the GCEDC STAMP Committee / GCEDC Board of Directors**

**S. G. Hyde, President and CEO**

**March 2, 2021 / March 4, 2021**

3c. The GCEDC Board at our meeting on February 4<sup>th</sup>, 2021 approved an increase in our professional services legal engagement with Phillips Lytle as described below. **As an update**, we have proceeded with active engagement as approved. However, as a point of clarification, at this juncture, the effort being expended is more related to negotiations assistance and the formulation of a “STAMP Main Substation Development Agreement” among four involved parties and their responsibilities as it relates to the ownership, operations and maintenance, funding and engineering, procurement and construction of the substation supporting its implementation (within the framework as described below). The legal effort supporting detailed regulatory engagement of the PSC (aka, CPCN) is being de-emphasized at this time.

**From 2/4/21 Board Meeting Packet:** 6.1 STAMP Main Substation – Phillips Lytle proposal (professional services – see attached): This proposal from Phillips Lytle is to provide legal, regulatory, and overall planning support from their energy law and consulting practice at Phillips Lytle. This is to foster completion of the design and engineering of the STAMP Main substation and related interconnection studies as well as to advance necessary ownership, operations and maintenance, regulatory and pricing models to enable the bidding, construction and operations of the 345kV to 115kV main substation at STAMP.

Cost: Not to exceed \$40,000

Source of Funding: Empire State Development’s GCEDC STAMP Capital (Project #132,367) – Upstate Revitalization Initiative (Capital Grant - \$8M)

CEO Recommendation: Approval