

SUPPLEMENTAL RESOLUTION
(Plug Power Inc. Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, June 3, 2021.

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

Resolution No. 06/2021 - 0a

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") (i) ACKNOWLEDGING THE SUPPLEMENTAL PUBLIC HEARING HELD BY THE AGENCY ON MONDAY, JUNE 3, 2021 WITH RESPECT TO THE PLUG POWER INC. (THE "COMPANY") AMENDED PROJECT (AS DESCRIBED BELOW), (ii) AUTHORIZING AN INCREASE IN THE FINANCIAL ASSISTANCE (AS DESCRIBED BELOW) TO BE PROVIDED BY THE AGENCY TO THE COMPANY, (iii) RATIFYING AND CONFIRMING THE FINDINGS OF THE AGENCY MADE IN THE RESOLUTIONS PREVIOUSLY ADOPTED BY THE AGENCY ON MARCH 4, 2021, AND MARCH 25, 2021, AND (iv) IF NECESSARY, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS

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, pursuant to resolutions adopted on March 4, 2021 (the "Initial Resolution") and March 25, 2021 (the "Final Resolution"), the Agency authorized certain Financial Assistance (as defined in the Final Resolution) with respect to a certain project (the "Project") to be undertaken by **PLUG POWER INC.** (the "Company"), as agent of the Agency, consisting of: (i) the acquisition by the Agency of a leasehold or other interest in certain real property located at 6840 Crosby Road in the Town of Alabama, New York (the "Land", being more particularly described as all or a portion of tax parcel Nos. 10.-1-41 and 10.-1-42); (ii) the planning, design, construction and operation of a green hydrogen production and distribution facility (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to Section 859-a of the Act, on Monday, March 22, 2021, at 6:30 p.m., local time, at the Town of Alabama Fire Department (Fire Hall) at 2230 Judge Road, Basom, New York 14125, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Initial Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, following the Initial Public Hearing and the adoption by the Agency of the Final Resolution, the Company informed the Agency that the Project would be amended (as so amended, the "Amended Project") as set forth below:

(i) the acquisition by the Agency of a leasehold or other interest in certain real property located at 6840 Crosby Road in the Town of Alabama, New York (the "Land", being more particularly described as all or a portion of tax parcel Nos. 10.-1-41 and 10.-1-42); (ii)(A) the planning, design, construction and operation on the Land of a green hydrogen production and distribution facility and (B) the planning, design, construction and operation on certain real property located on Lewiston Rd. in the Town of Alabama, New York (being more particularly described as all or a portion of tax parcel Nos. [6-1-84 and 10-1-4.112]) of a 345kV to 115kV main electric substation (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility").

WHEREAS, the Company further informed the Agency that the value of goods and services relating to the Project that will be subject to New York State and local sales and use tax will be in an amount of up to \$[48,921,000.00] (such amount being an increase of \$[35,000,000.00]), which will result in New York State and local sales and use tax exemption benefits not to exceed \$[3,913,680.00] (such amount being an increase of \$[2,800,000.00]); and

WHEREAS, pursuant to Section 859-a of the Act, on Thursday, June 3, 2021, at 10:00 a.m., local time, at the Alabama Town Hall, 2218 Judge Road, Oakfield, New York 14125, the Agency held a supplemental public hearing with respect to the modified Project and the proposed financial assistance being contemplated by the Agency (the "Supplemental Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of said Supplemental Public Hearing along with the Notice of Supplemental Public Hearing published and forwarded to the affected taxing jurisdictions ten (10) days prior to said Supplemental Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Agency desires to adopt a resolution (i) acknowledging that the Supplemental Public Hearing with respect to the modified Project was held in compliance with

the Act, (ii) authorizing the Company to make purchases of goods and services relating to the Project in the amount of up to \$[48,921,000.00], which will result in local sales and use tax exemption benefits not to exceed \$[3,913,680.00], (iii) ratifying and confirming the findings made by the Agency in the Initial Resolution and Final Resolution adopted, and (iv) if necessary, authorizing the execution and delivery of related documents.

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 Supplemental Public Hearing held by the Agency on June 3, 2021, concerning the modified Project and the Financial Assistance to be provided by the Agency to the Company was duly held in accordance with the Act, including but not limited to the giving of at least ten (10) days published notice of the Supplemental Public Hearing (such notice also provided to the Chief Executive Officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Amended Project.

Section 2. Based upon representations and warranties made by the Company, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project, that would otherwise be subject to New York State and local sales and use tax in an amount up to \$[48,921,000.00], which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$[3,913,680.00]. The Agency agrees to consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 3. Unless amended by the terms hereof, Agency hereby ratifies, confirms and reaffirms the findings made in the Initial Resolution and Final Resolution and hereby re-approves the Project, as amended, and the Financial Assistance.

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. These Resolutions shall take effect immediately upon adoption.

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 Zelif	[X]	[]	[]	[]
Matthew Gray	[X]	[]	[]	[]
Paul Battaglia	[X]	[]	[]	[]
Craig Yunker	[X]	[]	[]	[]
Todd Bender	[X]	[]	[]	[]
Amy Vanderhoof	[X]	[]	[]	[]
Marianne Clattenburg	[X]	[]	[]	[]

The resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION
(Plug Power Inc. Project)

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:

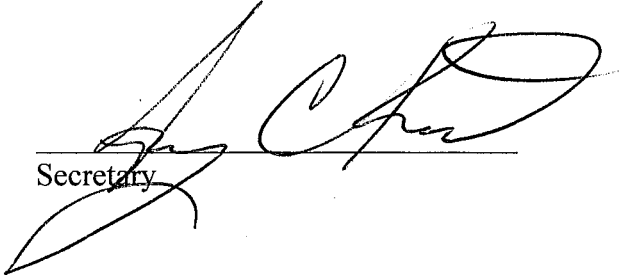
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on June 3, 2021, with the original thereof on file in the offices of the Agency, 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 3rd day of June, 2021.



Secretary