



Meeting Agenda – Audit and Finance Committee
Genesee Local Development Corp.
Thursday, September 2, 2021 – 4:00 p.m.
Location: Innovation Zone Conference Room, Suite 107

Page #	Topic	Discussion Leader	Desired Outcome
	1. Call To Order – Enter Public Session	D. Cunningham	
2-5	2. Chairman's Report & Activities 2a. Agenda Additions / Other Business 2b. Minutes: August 5, 2021	D. Cunningham	Vote
7-11	3. Discussions / Official Recommendations to the Board: 3a. July 2021 Financial Statements	L. Farrell	Disc / Vote
12-22	3b. Community Investment Agreement	M. Masse	Disc / Vote
	4. Adjournment	D. Cunningham	Vote

GGLDC Audit & Finance Committee Meeting

Thursday, August 5, 2021

Location - Innovation Zone

10:30 a.m.

MINUTES

ATTENDANCE

Committee Members: P. Battaglia, T. Felton, T. Bender

Staff: L. Farrell, M. Masse, P. Kennett, J. Krencik, S. Hyde, C. Suozzi

Guests: P. Zeff (GCEDC Board Member),

Absent: D. Cunningham

1. CALL TO ORDER / ENTER PUBLIC SESSION

T. Felton called the meeting to order at 11:40 a.m. in the Innovation Zone.

2. CHAIRMAN'S REPORT & ACTIVITIES

2a. Agenda Additions / Other Business – Nothing at this time.

2b. Minutes: June 29, 2021

P. Battaglia made a motion to recommend approval of the June 29, 2021 minutes; the motion was seconded by T. Bender. Roll call resulted as follows:

T. Felton - Yes
P. Battaglia - Yes
T. Bender - Yes
D. Cunningham – Absent

The item was approved as presented.

3. DISCUSSIONS / OFFICIAL RECOMMENDATIONS TO THE BOARD:

3a. June 2021 Financial Statements- L. Farrell reviewed with the Committee the significant items of the June 2021 long form financial statements.

- Regular monthly activity for all funds.

P. Battaglia made a motion to recommend to the full Board the approval of the June 2021 Financial Statements as presented; the motion was seconded by T. Bender. Roll call resulted as follows:

T. Felton - Yes

- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham – Absent

The item was approved as presented.

3b. Strategic Investment Funds Analysis – L. Farrell reviewed the Strategic Investments Analysis with the Committee. She noted the following:

- Final approval of YSG Solar will be presented to the Board at today's meeting. If the project is approved, \$25K can be anticipated coming into the Workforce Development & Economic Dev. Program Support Funding along with annual lease payments of \$12K per year.
- Mega Properties land sale net proceeds were added, previously an opportunity.
- HP Hood and Upstate Niagara OCR loans have not yet closed, so they have not been added as a source of funds. This cash is reflected as a memo item only.

3c. Assessment of the Effectiveness of Internal Controls – L. Farrell shared that Public Authorities Law requires all public authorities to complete an annual assessment of the effectiveness of their internal control structures and procedures.

The 2021 Assessment of the Effectiveness of Internal Controls identifies and summarizes the controls in place for major business functions. A list of vendors that the Committee has authorized can be paid online is included as part of the narrative. Travelers Insurance was added to the list of vendors that the Committee reviewed last year.

The Committee is asked to review and approve the Assessment of the Effectiveness of Internal Controls annually (this is not brought to the full Board for approval).

P. Battaglia made a motion to approve the Assessment of the Effectiveness of Internal Controls and the list of vendors that can be paid online; the motion was seconded by T. Bender. Roll call resulted as follows:

- T. Felton - Yes
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham – Absent

The item was approved as presented.

3d. John Jakubowski Contract - John Jakubowski has provided a consulting agreement for the period of August 15, 2021 through August 14, 2022 to perform the following:

1. Perform consulting services to assist in the development and implementation of workforce development programs and training initiatives relative to the goals of the Company and its affiliates.
2. Consult with the VP of Business Development of the GCEDC and staff relative to the application, development and deployment of its workforce programs.

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3. Consult with educational institutions who may serve as partners in the development, implementation and delivery of training programs. Specifically, interface with Genesee Community College and its BEST Center, other institutions of higher learning, the Genesee Valley Educational Partnership and local secondary schools as appropriate.
4. Provide consulting services as requested by the GCEDC / GGLDC.

This contract is not to exceed \$29,800 in total between the GGLDC and GCEDC and was included in the GGLDC budget to be paid by Strategic Investment funds.

P. Battaglia made a motion to recommend to the full Board the approval of the John Jakubowski Contract; the motion was seconded by T. Bender. Roll call resulted as follows:

T. Felton - Yes
P. Battaglia - Yes
T. Bender - Yes
D. Cunningham - Absent

The item was approved as presented.

3e. Ag Park Drainage Contract - The GGLDC has received a final engineering, bidding and construction inspection proposal to eliminate the drainage from a parcel on the north side of Ag Park Drive from going to the stormwater pond on the south side of Ag Park Drive. A company would like to purchase the acreage on the south side of Ag Park Drive and does not want drainage from property they don't own crossing onto their property. The proposal would be to construct roadside ditching and drainage within the existing ROW to allow the water to drain from east to west along the roadway.

Fund Commitment: Not to exceed \$17,800 from Strategic Investment funds.

T. Bender made a motion to recommend to the full Board the approval of the Ag Park Drainage Contract not to exceed \$17,800 as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

T. Felton - Yes
P. Battaglia - Yes
T. Bender - Yes
D. Cunningham - Absent

The item was approved as presented.

3f. Workforce – City of Batavia Police Community Night Out - C. Suozzi reviewed the sources and uses of the Workforce Development Fund for 2021 -2022, which is outlined in the Committee materials provided. C. Suozzi requested the approval of the sponsorship in the amount of \$250 for the City of Batavia Police Community Night Out Event.

T. Bender made a motion to recommend to the full Board the approval of the \$250 level sponsorship for the City of Batavia Police Community Night Out Event; the motion was seconded by P. Battaglia. Roll call resulted as follows:

T. Felton - Yes
P. Battaglia - Yes

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T. Bender - Yes
D. Cunningham - Absent

The item was approved as presented.

3g. Northman & Star (Nexgistics) PSA - The GGLDC has received a Purchase and Sale Agreement (PSA) from Nexgistics, Inc. to acquire approximately 29.25 acres (10+/- buildable acres) out of tax parcel 19.-1-13 for \$50,000 per buildable acre with a total sale price of \$500,000.

Fund Commitment: Legal fees to Harris Beach not to exceed \$7,500.00 for the transaction.

Resolution No. 08/2021 - 01

RESOLUTION OF THE GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION AUTHORIZING (i) THE SALE OF CERTAIN CORPORATION OWNED REAL PROPERTY TO STACY NORTHMAN AND RICHARD STAR O/B/O AN ENTITY TO BE FORMED, (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.

T. Bender made a motion to recommend to the full Board the approval of Resolution #08/2021-01, including the PSA and payment of legal fees not to exceed \$7,500; the motion was seconded by P. Battaglia. Roll call resulted as follows:

T. Felton - Yes
P. Battaglia - Yes
T. Bender - Yes
D. Cunningham - Absent

The item was approved as presented.

3h. J & R Fancher PSA - The GGLDC has received a Purchase and Sale Agreement from Fancher to acquire approximately 2.6 acres out of tax parcel 19.-1-74 for \$50,000 per buildable acre with a total sale price of \$130,000.

Fund Commitment: Legal fees to Harris Beach not to exceed \$7,500.00 for the transaction.

Resolution No. #08/2021 - 02

RESOLUTION OF THE GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION AUTHORIZING (I) THE SALE OF CERTAIN LANDS TO J & R FANCHER PROPERTY HOLDINGS, LLC COMPRISING APPROXIMATELY 2.60 +/- ACRES LOCATED IN THE TOWN OF PEMBROKE, GENESEE COUNTY, NEW YORK, AND KNOWN AS PART OF TAX PARCEL 19.-1-74 (THE "LAND"), AND (II) THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT FOR THE CONVEYANCE OF THE LAND AND THE EXECUTION AND DELIVERY OF DOCUMENTS NECESSARY AND INCIDENTAL THERETO

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T. Bender made a motion to recommend to the full Board the approval of Resolution #08/2021-01, including the PSA from J & R Fancher as presented and payment of legal fees not to exceed \$7,500; the motion was seconded by P. Battaglia. Roll call resulted as follows:

- T. Felton - Yes
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Absent

The item was approved as presented.

4. ADJOURNMENT

T. Bender made a motion to adjourn at 11:44 a.m., seconded by T. Felton and passed unanimously.

Genesee Gateway Local Development Corp.
July 2021 Dashboard
Balance Sheet - Accrual Basis

	<u>7/31/21</u>	<u>6/30/21</u>	<u>[Per Audit]</u> <u>12/31/20</u>
ASSETS:			
Cash - Unrestricted	\$ 462,409	\$ 462,507	\$ 410,759
Cash - Restricted (A)	494,884	494,812	512,822
Cash - Reserved (B)	1,418,266	1,475,082	1,090,637
Cash - Subtotal	2,375,559	2,432,401	2,014,218
Grants Receivable (1)	5,406	5,406	30,406
Accounts Receivable	674	770	8,290
Loans Receivable - Current Portion	285,944	286,580	318,166
Other Current Assets (2)	11,088	13,124	872
Total Current Assets	2,678,671	2,738,281	2,371,952
Land Held for Dev. & Resale	2,885,776	2,885,776	3,496,874
Buildings & Improvements	7,202,120	7,202,120	7,202,120
Furniture, Fixtures & Equipment	46,599	46,599	46,599
Total Property, Plant & Equip.	10,134,495	10,134,495	10,745,593
Less Accumulated Depreciation	(2,070,937)	(2,054,610)	(1,956,649)
Net Property, Plant & Equip.	8,063,558	8,079,885	8,788,944
Loans Receivable - Noncurrent Portion (Net of \$202,125 Allow for Bad Debt)	826,639	841,614	882,490
Equity Investment in Genesee Agri-Business, LLC (3)	2,562,240	2,562,240	3,220,240
Other Assets	3,388,879	3,403,854	4,102,730
Total Assets	14,131,108	14,222,020	15,263,626
LIABILITIES:			
Accounts Payable (4)	32,609	96,494	47,314
Unearned Revenue (5)	54,398	55,280	39,255
Security Deposits	109,944	109,944	109,944
Loans Payable - Current Portion	81,784	81,513	79,875
Bonds Payable - Current Portion	147,972	147,433	144,871
Total Current Liabilities	426,707	490,664	421,259
Loans Payable - Noncurrent Portion	2,213,470	2,220,408	2,261,585
Bonds Payable - Noncurrent Portion	2,586,586	2,600,884	2,682,494
Total Noncurrent Liabilities	4,800,056	4,821,292	4,944,079
Total Liabilities	5,226,763	5,311,956	5,365,338
EQUITY	\$ 8,904,345	\$ 8,910,064	\$ 9,898,288

Significant Events:

1. Grants Receivable - YTD decrease due to receipt of 241 Knapp Solar II funding supporting Workforce Development initiatives and the overall Economic Development Program.
2. Other Current Assets - Prepaid D&O Insurance and general liability insurance.
3. Equity Investment in Genesee Agri-Business, LLC - YTD decrease due to distribution from GAB,LLC in May 2021; ties to corresponding GAB,LLC financial statements.
4. Accounts Payable - Grant for continuing Economic Development Program Support and MedTech Centre Property Management.
5. Unearned Revenue - MedTech Centre rent received in advance etc.

(A) Restricted = Community Benefit Agreement (CBA) Funds, Security Deposits, USDA Debt Sinking Fund.

(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Metropolitan Area Redevelopment Loan Funds, Grant Funds.

Genesee Gateway Local Development Corp.
July 2021 Dashboard
Profit & Loss - Accrual Basis

	Month to Date		YTD		2021	2021
	7/31/21	7/31/20	2021	2020	Board Approved Budget	YTD % of Budget
<u>Operating Revenues:</u>						
Grants (1)	\$ -	\$ -	\$ 50,000	\$ 218,000	\$ 997,648	5%
Interest Income on Loans	2,053	2,102	10,978	13,119	23,724	46%
Rent	56,593	58,966	423,911	403,160	708,787	60%
Common Area Fees - Parks	-	-	500	500	500	100%
Fees	-	2,000	3,000	4,900	-	N/A
Other Revenue	-	-	27	2,544	-	N/A
Land Sale Proceeds (2)	-	-	337,500	-	-	N/A
Total Operating Revenues	58,646	63,068	825,916	642,223	1,730,659	
<u>Operating Expenses:</u>						
Operations & Maintenance	2,851	5,882	75,210	76,404	145,838	52%
Professional Services	6,961	9,370	64,872	67,849	156,535	41%
Econ. Dev. Prog. Support Grant	25,000	25,000	175,000	175,000	300,000	58%
Site Development Expense	-	9,000	14,625	474,498	93,000	16%
Cost of Sales	-	-	621,489	-	-	N/A
Grant Expense (3)	-	-	658,145	-	1,044,148	63%
Real Estate Dev. (Capitalized)	-	920	100	1,020	15,000	1%
Buildings/Furniture/Equip. (Capitalized)	-	-	-	-	5,000	0%
Balance Sheet Absorption	-	(920)	(100)	(1,020)	(20,000)	1%
Depreciation	16,327	16,407	114,288	114,850	195,922	58%
Total Operating Expenses	51,139	65,659	1,723,629	908,601	1,935,443	
Operating Expense	7,507	(2,591)	(897,713)	(266,378)	(204,784)	
<u>Non-Operating Revenues (Expenses):</u>						
Other Interest Income	232	397	1,951	8,417	4,800	41%
Interest Expense	(13,458)	(20,319)	(98,181)	(144,563)	(168,156)	58%
Total Non-Operating Exp.	(13,226)	(19,922)	(96,230)	(136,146)	(163,356)	
Change in Net Assets	(5,719)	(22,513)	(993,943)	(402,524)	\$ (368,140)	
Net Assets - Beginning	8,910,064	9,869,987	9,898,288	10,249,998		
Net Assets - Ending	\$ 8,904,345	\$ 9,847,474	\$ 8,904,345	\$ 9,847,474		

Significant Events:

1. Grant Revenue YTD - Two solar projects closed (3104 & 3232 Batavia Solar) and grant revenue was recognized supporting Workforce Development initiatives and the overall Economic Development Program.
2. Land Sale Proceeds YTD - Mega Properties land sale at Gateway II Corporate Park.
3. Grant Expense YTD - Grant to Genesee Valley BOCES to acquire equipment for mechatronics workforce training.

Genesee Gateway Local Development Corp.
July 2021 Dashboard
Statement of Cash Flows

	July 2021	YTD
CASH USED BY OPERATING ACTIVITIES:		
Grant Income	\$ -	\$ 75,000
Interest Income on Loans	2,449	12,790
Rental Income	55,315	438,718
Common Area Fees - Parks	-	500
Fees	-	3,000
Other Revenue	-	5,500
Net Land Sale Proceeds	-	327,209
Operations & Maintenance	(682)	(121,499)
Professional Services	(20,883)	(63,955)
Economic Development Program Support Grant	(75,000)	(150,000)
Site Development Expense	-	(18,507)
Improvements of Land Held for Dev. & Resale	-	(100)
Grant Expense	-	(658,145)
Issuance of Loans	-	(150,000)
Repayment of Loans	15,611	238,073
Net Cash Used By Operating Activities	(23,190)	(61,416)
CASH FLOWS USED BY CAPITAL & RELATED FINANCING ACTIVITIES:		
Principal Payments on Bonds & Loans	(20,426)	(139,013)
Interest Paid on Bonds & Loans	(13,458)	(98,181)
Net Cash Used By Capital & Related Financing Activities	(33,884)	(237,194)
CASH FLOWS PROVIDED BY INVESTING ACTIVITIES:		
Interest Income	232	1,951
Distribution from GABLLC	-	658,000
Net Cash Provided By Investing Activities	232	659,951
Net Change in Cash	(56,842)	361,341
Cash - Beginning of Period	2,432,401	2,014,218
Cash - End of Period	\$ 2,375,559	\$ 2,375,559
RECONCILIATION OF OPERATING REVENUE (EXPENSE)		
TO NET CASH USED BY OPERATING ACTIVITIES:		
Operating Revenue (Expense)	\$ 7,507	\$ (897,713)
Adjustments:		
Depreciation Expense	16,327	114,288
Decrease in Land Held For Dev. & Resale	-	611,098
Decrease in Grants/Accounts Receivable	96	32,616
Decrease (Increase) in Other Current Assets	2,036	(10,216)
Decrease in Loans Receivable	15,611	88,073
Decrease Operating Accounts Payable	(63,885)	(14,705)
Increase (Decrease) in Unearned Revenue	(882)	15,143
Total Adjustments	(30,697)	836,297
Net Cash Used By Operating Activities	\$ (23,190)	\$ (61,416)

Genesee Gateway Local Development Corp.
July 2021 Dashboard
Balance Sheet - Accrual Basis

	GGLDC		GABLLC		COMBINED	
	7/31/21		7/31/21		7/31/21	Per Audit 12/31/2020
ASSETS:						
Cash - Unrestricted	\$ 462,409	\$	-	\$	462,409	\$ 410,759
Cash - Restricted (A)	494,884		-		494,884	512,822
Cash - Reserved (B)	1,418,266		1,046,201		2,464,467	2,786,172
Cash - Subtotal	<u>2,375,559</u>		<u>1,046,201</u>		<u>3,421,760</u>	<u>3,709,753</u>
Grants Receivable	5,406		-		5,406	30,406
Accts Receivable - Current	674		-		674	8,290
Loans Receivable - Current	285,944		-		285,944	318,166
Other Current Assets	11,088		-		11,088	872
Total Current Assets	<u>2,678,671</u>		<u>1,046,201</u>		<u>3,724,872</u>	<u>4,067,487</u>
Land & Improvements	2,885,776		2,452,174		5,337,950	5,949,048
Buildings & Improvements	7,202,120		-		7,202,120	7,202,120
Furniture, Fixtures & Equipment	46,599		-		46,599	46,599
Total Property, Plant & Equip.	<u>10,134,495</u>		<u>2,452,174</u>		<u>12,586,669</u>	<u>13,197,767</u>
Less Accumulated Depreciation	(2,070,937)		-		(2,070,937)	(1,956,649)
Net Property, Plant & Equip.	<u>8,063,558</u>		<u>2,452,174</u>		<u>10,515,732</u>	<u>11,241,118</u>
Loans Receivable - Noncurrent	826,639		-		826,639	882,490
Equity Investment in GAB, LLC	2,562,240		-	(2,562,240)	-	-
Other Assets	<u>3,388,879</u>		<u>-</u>	<u>(2,562,240)</u>	<u>826,639</u>	<u>882,490</u>
TOTAL ASSETS	<u>14,131,108</u>		<u>3,498,375</u>	<u>(2,562,240)</u>	<u>15,067,243</u>	<u>16,191,095</u>
LIABILITIES:						
Accounts Payable	32,609		-		32,609	47,314
Unearned Revenue	54,398		-		54,398	39,255
Security Deposits	109,944		-		109,944	109,944
Loans Payable - Current Portion	81,784		-		81,784	79,875
Bonds Payable - Current Portion	147,972		-		147,972	144,871
Total Current Liabilities	<u>426,707</u>		<u>-</u>	<u>-</u>	<u>426,707</u>	<u>421,259</u>
Loans Payable - Noncurrent Portion	2,213,470		-		2,213,470	2,261,585
Bonds Payable - Noncurrent Portion	2,586,586		-		2,586,586	2,682,494
Total Noncurrent Liabilities	<u>4,800,056</u>		<u>-</u>	<u>-</u>	<u>4,800,056</u>	<u>4,944,079</u>
TOTAL LIABILITIES	<u>5,226,763</u>		<u>-</u>	<u>-</u>	<u>5,226,763</u>	<u>5,365,338</u>
EQUITY	<u>\$ 8,904,345</u>	<u>\$ 3,498,375</u>	<u>\$ (2,562,240)</u>	<u>\$ 9,840,480</u>	<u>\$ 10,825,757</u>	

(A) Restricted = Community Benefit Agreement (CBA) Funds, Security Deposits, USDA Debt Sinking Fund, Grant Funds

(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Micropolitan Area Redevelopment Loan Funds, Grant Funds

**Genesee Gateway Local Development Corp.
July 2021 Dashboard
Profit & Loss - Accrual Basis**

	GGLDC		GABLLC		COMBINED	
	<u>7/31/21</u>	<u>7/31/21</u>	<u>Eliminations</u>	<u>7/31/21</u>	<u>Combined</u>	<u>YTD</u>
<u>Operating Revenues:</u>						
Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000
Interest Income on Loans	2,053	-	-	2,053	-	10,978
Rent	56,593	2,472	-	59,065	-	433,679
Common Area Fees - Parks	-	-	-	-	-	6,768
Fees	-	-	-	-	-	3,000
Other Revenue	-	-	-	-	-	27
Land Sale Proceeds	-	-	-	-	-	337,500
Total Operating Revenues	58,646	2,472	-	61,118	-	841,952
<u>Operating Expenses:</u>						
Operations & Maintenance	2,851	-	-	2,851	-	83,601
Professional Services	6,961	-	-	6,961	-	64,872
Econ. Dev. Program Support Grant	25,000	-	-	25,000	-	175,000
Site Development Expense	-	-	-	-	-	14,625
Cost of Sales	-	-	-	-	-	621,489
Grant Expense	-	-	-	-	-	658,145
Real Estate Development (Capitalized)	-	-	-	-	-	100
Balance Sheet Absorption	-	-	-	-	-	(100)
Depreciation	16,327	-	-	16,327	-	114,288
Total Operating Expenses	51,139	-	-	51,139	-	1,732,020
Operating Expense	7,507	2,472	-	9,979	-	(890,068)
<u>Non-Operating Revenues (Expenses):</u>						
Other Interest Income	232	97	-	329	-	2,972
Interest Expense	(13,458)	-	-	(13,458)	-	(98,181)
Total Non-Operating Rev (Exp)	(13,226)	97	-	(13,129)	-	(95,209)
Change in Net Assets	(5,719)	2,569	-	(3,150)	-	(985,277)
Net Assets - Beginning	8,910,064	3,495,806	(2,562,240)	9,843,630	-	10,825,757
Net Assets - Ending	\$ 8,904,345	\$ 3,498,375	\$ (2,562,240)	\$ 9,840,480	\$ -	\$ 9,840,480

Significant Events:

1. Adjustment - Cash distribution to the GGLDC.

Host Community Investment Agreement

Discussion: Plug Power, Inc. is looking to locate a new green hydrogen facility at the STAMP site. In connection with that development, Plug Power, Inc. is seeking to enter into a Host Community Investment Agreement with the GGLDC. The revenues paid by the Company to the Corporation, which shall be utilized at the sole and absolute discretion of the Corporation, are to be provided (i) to facilitate future development and public infrastructure improvements within Genesee County related to the STAMP site; (ii) as a source of funding for prospective costs and expenses associated with and related to anticipated transportation corporation services and additional infrastructural improvements to be provided as a result of the STAMP needs in Genesee County; (iii) debt service and (iv) other economic development purposes.

Fund Commitment: None.

Committee Action Request: Recommend approval and execution of the Host Community Investment Agreement with Plug Power, Inc.

HOST COMMUNITY INVESTMENT AGREEMENT

THIS HOST COMMUNITY INVESTMENT AGREEMENT (the "Community Investment Agreement"), dated as of the 1st day of June 2021, by and between the **GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION**, a not-for-profit local development corporation of the State of New York (the "State"), with offices at 99 MedTech Drive, Suite 106, Batavia, New York 14020 (the "Corporation") and _____, a _____ having an address c/o **PLUG POWER, INC.**, 968 Albany Shaker Road, Latham, New York 12110 (the "Company"), with acknowledgment hereof by **STAMP WATER WORKS, INC.**, a business corporation of the State, with offices at 99 MedTech Drive, Suite 106, Batavia, New York 14020 ("STAMP Water") and **STAMP SEWER WORKS, INC.**, a business corporation of the State, with offices at 99 MedTech Drive, Suite 106, Batavia, New York 14020 ("STAMP Sewer").

WITNESSETH:

WHEREAS, pursuant to the purposes and powers contained within Section 1411 of the Not-for-Profit Corporation Law ("N-PCL") of the State, as amended (hereinafter collectively called the "Act"), and pursuant to its certificate of incorporation filed on September 20, 2004, as amended (the "Certificate"), the Corporation was established as a not-for-profit local development corporation of the State with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Corporation on _____, 2021 (the "Resolution"), the Corporation determined to enter into this Community Investment Agreement with the Company; and

WHEREAS, the Company has agreed to undertake a capital project (the "Project") at the WNY STAMP site (the "STAMP site") in the Town of Alabama, Genesee County consisting of: (i) the acquisition by the Company of 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") and (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, the Company recognizes that such Project has impacted and will impact the surrounding community, particularly the STAMP site, Genesee County, New York; and

WHEREAS, in consideration for the impacts on the community and the support and participation of Genesee County with respect to the Project, the Company has agreed to provide twenty (20) annual payments to the Corporation, as set forth within this Community Investment Agreement (collectively, the "Community Investments"); and

WHEREAS, in furtherance of satisfying the Community Investments, the Corporation shall administer the community Investment fund (the "Fund") established pursuant to the terms and conditions contained herein; and

WHEREAS, the Corporation and the Company wish to memorialize the terms and conditions associated with the Fund in order to satisfy the Community Investments.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Article I – Representations and Covenants

Section 1.1. Representations and Covenants of the Corporation.

The Corporation makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Corporation is duly established and validly existing under the provisions of the Act and has the power to enter into the transaction contemplated by this Community Investment Agreement and to carry out its obligations hereunder.

(b) The Corporation has been duly authorized to execute and deliver this Community Investment Agreement.

(c) Neither the execution and delivery of this Community Investment Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Community Investment Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Corporation is a party or by which it is bound, or will constitute default under any of the foregoing.

(d) The Corporation has been induced to enter into this Community Investment Agreement by the undertaking of the Company to acquire, construct, equip, repair and maintain the Facility and to create jobs in Genesee County, New York.

Section 1.2. Representations and Covenants of the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly formed, validly existing and in good standing under the laws of the [State of Delaware], is authorized to do business in the State, has the authority to enter into this Community Investment Agreement and has duly authorized the execution and delivery of this Community Investment Agreement.

(b) Neither the execution and delivery of this Community Investment Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Community Investment Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) Except as disclosed to the Corporation, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would materially diminish or adversely impact on the Company's ability to fulfill its obligations under this Community Investment Agreement.

Article II - Payee/Payment of Annual Community Investment Fee.

Section 2.1. (a) *Payee.* For so long as this Community Investment Agreement is in effect, the Company agrees to pay to the Corporation (at its address noted above) an annual Investment fee (the "Annual Investment Fee") on or before January 1 of each calendar year commencing on January 1, 2023 (the "Payment Date"), an amount correlating to the Total Payment Amount, as set forth within **Schedule A** hereto. The Company hereby agrees to pay all such amounts due pursuant to this Community Investment Agreement on or before each Payment Date in accordance with the terms hereof.

(b) *Payment of Annual Investment Fee.* The Company, pursuant to the terms of this Community Investment Agreement, shall remit to the Corporation an Annual Investment Fee equal to an amount correlating to the Total Payment Amount, as set forth within **Schedule A** hereto. The Company's failure to remit any Annual Investment Fee due pursuant to this Community Investment Agreement within thirty (30) days following notice from the Corporation that the Company failed to make the applicable payment by the corresponding Payment Date shall require additional payment by the Company of a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such Annual Investment Fee is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to ten percent (10%) per annum.

(c) *Use of Fund; Public Purposes.* The parties agree and acknowledge that payments made hereunder are to provide revenues for public purposes to be undertaken by the Corporation and/or any duly appointed agent or assignee thereof. The revenues paid by the Company to the Corporation, which shall be utilized at the sole and absolute discretion of the Corporation, are to be provided (i) to facilitate future development and public infrastructure improvements within Genesee County related to the STAMP site; (ii) as a source of funding for prospective costs and

expenses associated with and related to anticipated transportation corporation services and additional infrastructural improvements to be provided as a result of the STAMP needs in Genesee County; (iii) debt service and (iv) other economic development purposes.

Article III - Transfer of Facility; Termination; Default; Remedies.

Section 3.1. This Community Investment Agreement shall be for a term of twenty (20) years to commence as of the date hereof, unless otherwise terminated by the written agreement of the parties hereto or as otherwise provided herein. Any such termination hereunder shall require the Company to make a pro-rated payment of Annual Investment Fee as of the date of termination, such pro-rated payment to be reflective of the number of days within the calendar year of termination that this Community Investment Agreement was in effect. Notwithstanding anything contained herein to the contrary, should that certain Tax Agreement, dated as of _____, 2021, by and between the Company and Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (as such agreement may be amended from time to time), terminate, expire or otherwise be cancelled, this Community Investment Agreement and the Company's payment obligations hereunder shall also terminate and expire.

Section 3.2. Each of the following shall be an "Event of Default" under this Community Investment Agreement: (a) the failure by the Company to make any payment due and owing the Corporation or its duly authorized agent and/or assignee within sixty (60) days of written demand therefore and such failure continued for ten (10) days following the Company's receipt of written notice thereof; or (b) the failure by the Company to observe or perform any other covenant, condition or agreement required by this Community Investment Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Corporation gives written notice to the Company, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or (c) if any representation or warranty of the Company contained in this Community Investment Agreement is incorrect in any material respect.

Section 3.3. Whenever any Event of Default shall have occurred and be continuing, the Corporation may take, to the extent permitted by law, any one or more of the following remedial steps: (a) terminate this Community Investment Agreement; (b) take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default; and (c) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Community Investment Agreement.

[Section 3.4. In the event that the Facility is transferred from the Agency (as hereinafter defined) to the Company (i.e., the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption, the obligations of the Company to make payments hereunder shall, to such extent, be null and void.]

Article IV - Changes in Law.

Section 4.1. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Article V - Miscellaneous.

Section 5.1. This Community Investment Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 5.2. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid or by national overnight courier service, or by e-mail, addressed as follows:

To the Corporation:

Genesee Gateway Local Development Corporation
99 MedTech Drive, Suite 106
Batavia, New York 14020
Attention: Donald Cunningham, President
E-mail:

To Corporation Counsel:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.
E-mail:

To the Company:

c/o Plug Power, Inc.
968 Albany Shaker Road
Latham, New York 12110
Attn:
E-mail:

To Company Counsel:

c/o Plug Power, Inc.
968 Albany Shaker Road
Latham, New York 12110
Attn: Gerard L. Conway, Jr., Esq.
E-mail:

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. A hand-delivered notice shall be effective upon delivery; a notice sent by certified mail shall be effective three (3) days after mailing; a notice by overnight delivery service shall be effective as of the date of delivery as confirmed by the delivery receipt; and a notice sent by e-mail shall be effective as of the date of delivery as confirmed by the delivery receipt.

Section 5.3. This Community Investment Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Genesee County, New York.

Section 5.4. The Corporation, in its exclusive discretion, may assign this Community Investment Agreement to a third-party for purposes of administering the undertakings outlined herein; however, no such assignment shall relieve the Corporation of its obligations hereunder. In the event of such assignment, the Corporation shall notify the Company in writing at least thirty (30) days in advance of the effective date of any such assignment.

Notwithstanding anything to the contrary, with the prior written consent of the Corporation, the Company may sell, assign, or dispose of all or substantially all of its property, and may assign this Community Investment Agreement, to any permitted assignee of, or sublessee under, that certain Leaseback Agreement dated as of the date hereof between Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, as lessor, and the Company (the "Agency"), as lessee (the "Leaseback Agreement"). In such event, the Corporation will accept the assignee of this Community Investment Agreement as the "Company" for all purposes of this Community Investment Agreement and will release the original Company from any and all liabilities under this Community Investment Agreement with respect to acts, events or omissions occurring after such assignment. The Company and/or the assignee shall notify the Corporation in writing in the event of such assignment.

Section 5.5. (a) The obligations and agreements of the Corporation contained herein shall be deemed the obligations and agreements of the Corporation, and not of any member, officer, agent or employee of the Corporation in his individual capacity, and the members, officers, agents and employees of the Corporation shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Corporation contained herein and in the other related documents shall not constitute or give rise to an obligation of the State of New York or of Genesee County, New York and neither the State of New York nor Genesee County, New York shall be liable hereon or thereon.

The obligations and agreements of the Company contained herein shall be deemed the obligations and agreements of the Company, and not of any member, officer, agent or employee of the Company in his or her individual capacity, and the members, officers, agents and employees of the Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(c) No order or decree of specific performance with respect to any of the obligations of the Corporation hereunder shall be sought or enforced against the Corporation unless (1) the party seeking such order or decree shall first have requested the Corporation in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Corporation shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Corporation refuses to comply with such request and the Corporation's refusal to comply is based upon its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Corporation, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Corporation refuses to comply with such request and the Corporation's refusal to comply is based upon its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify and hold harmless the Corporation and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Corporation, furnish to the Corporation satisfactory security to protect the Corporation and its members, officers, agents (other than the Company) and employees against all liability reasonably expected to be incurred as a result of compliance with such request.

[Remainder of Page Intentionally Left Blank]

[Signature Page to Community Investment Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Community Investment Agreement as of the day and year first above written.

**GENESEE GATEWAY LOCAL
DEVELOPMENT CORPORATION**

By: _____
Donald Cunningham, President

By: _____

**ACKNOWLEDGMENT OF CORPORATION'S
RIGHTS UNDER COMMUNITY INVESTMENT AGREEMENT**

The undersigned hereby acknowledges receipt of notice of the Community Investment Agreement (the "Community Investment Agreement") by and between the GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION (the "Corporation") and PLUG POWER, INC. (the "Company"), including the right of the Corporation to collect and receive all amounts payable in such amounts and at such times as set forth in Schedule A to the Community Investment Agreement. The foregoing shall not be construed, however, as a waiver or release of any claims or rights that the undersigned may at any time have against the Corporation or the Company, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of [_____] 1, 2021.

STAMP WATER WORKS, INC.

By: _____
Name:
Title:

STAMP SEWER WORKS, INC.

By: _____
Name:
Title:

SCHEDULE A
TO
HOST COMMUNITY INVESTMENT AGREEMENT
DATED AS OF JUNE 1, 2021
BETWEEN
GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION
AND

*[**Payment amounts to be confirmed**]*

<u>Payment Year</u>	<u>Payment Due Date</u>	<u>Total Payment Amount</u>
Year 1	January 1, 2023	\$ 900,228
Year 2	January 1, 2024	\$ 900,228
Year 3	January 1, 2025	\$ 900,228
Year 4	January 1, 2026	\$ 900,228
Year 5	January 1, 2027	\$ 900,228
Year 6	January 1, 2028	\$ 900,228
Year 7	January 1, 2029	\$ 900,228
Year 8	January 1, 2030	\$ 900,228
Year 9	January 1, 2031	\$ 900,228
Year 10	January 1, 2032	\$ 900,228
Year 11	January 1, 2033	\$ 900,228
Year 12	January 1, 2034	\$ 900,228
Year 13	January 1, 2035	\$ 900,228
Year 14	January 1, 2036	\$ 900,228
Year 15	January 1, 2037	\$ 900,228
Year 16	January 1, 2038	\$ 900,228
Year 17	January 1, 2039	\$ 900,228
Year 18	January 1, 2040	\$ 900,228
Year 19	January 1, 2041	\$ 900,228
Year 20	January 1, 2042	\$ 900,228
TOTAL		\$18,004,560