

Town Board Meeting October 11, 2021

Supv. Crossen called the monthly meeting of the Alabama Town Board to order at 7:00 p.m. Roll Call was taken, Councilperson Fisher, LaGrou, Klotzbach, Veazey and Supv. Crossen were present. Also present were Supt. Covell, Attorney Boylan, Mark Masse, Dave Bencic, Wendy Kingsland and Kaylen Olwin. Also present via zoom: Bob Klavoon

Privilege of the Floor

Dave Bencic – at the last meeting it was mentioned that hydrogen is safe. He has worked with it and says unless there are detectors you won't see a leak. Mr. Bencic read information to the Board. Disc. held.

Kaylen Olwin & Wendy Kingsland, EDPR – Alabama Solar is in the development process, it can take a while. Environmental studies continue to be done.

Highway – Supt. Covell gave update:

Ditching projects are done.

Worked with the Towns of Byron & Batavia as part of Shared Services.

Final Round of chip sealing is done.

Will be billing My-T-Acres for the damage done to Galloway Road.

Mowing is 90% done.

Working with Sergi on restoration of ditches.

Judge Road Guard Rail – price is much higher than previously thought. A 100 foot section of good, used guardrail is approx. \$5,000. New would be \$8,000. Will put this purchase on hold for now.

Genesee County Snow, Ice & Mowing Contract for 2022

This contract includes plowing of Stamp Drive.

The County will pay \$5,825 per centerline mile for 11.98 miles of county Roads and \$8,737.50 per centerline mile for 10.02 miles of Touring Routes for a total annual payment of \$157,333.25 for snow and ice.

The County will pay \$502 per centerline mile for 20.88 miles of County roads for a total annual payment of \$10,481.75 for mowing.

MOTION by Councilperson Fisher, seconded by Councilperson LaGrou to accept the 2022 Genesee County Intermunicipal Agreement for the Provision of Snow Removal and Ice Control Services and Roadside Mowing. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Damaged Truck – Selective Insurance has totalled the truck and provided the cost to the Town to buy it back. Disc. held.

Total loss settlement amount:

Actual Cash Value \$15,646.00

Sales Tax Rate 8.0000%

State Sales Tax \$1,251.68
Vehicle Decals \$0.00
Misc/ Out of Pocket \$0.00
Title/Tag/Reg Fees \$0.00
Deductible \$500.00

Settlement Total \$16,397.68
Buy Back Value \$4,658.00
Net Payment we take vehicle \$16,397.68 - \$7,445.27 (already paid)= \$8,952.41
Net payment owner retained vehicle \$11,739.68 - \$7,445.27(already paid) = \$4,294.41

MOTION by Councilperson Veazey, seconded by Councilperson Fisher to allow Supv. Crossen, with recommendations from Supt. Covell and Councilperson Fisher, to negotiate the buyback amount on the truck, at an amount not to exceed \$4,658.00. Approved by roll call vote:
C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Water Dist. #1 Water Rate – no information for this month. Will table to next month.

STAMP – Mark Masse gave update:

Closed in escrow with Plug Power on Friday. Should be filed with the County on Oct. 12th. They own the 30 acre parcel. Sale price was \$70,000 per acre. The Town’s portions of revenue from the sale will be \$105,000.

Plug Power has moved groundbreaking to Oct. 20th at 10:30 a.m.

Had a site visit from another company.

Disc. on temporary septic holding tank for Plug Power. They are working with the DEC.

Grading Permit Application

Wendel created a Grading Permit Application for the STAMP site.

MOTION by Councilperson Fisher, seconded by Councilperson LaGrou to approve the Erosion & Sedimentation Control, Grading and/or Stormwater Management Permit for use at the STAMP Site. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Wendel Site Observation Services Proposal for Plug Power

Disc. held, Wendel will be on site approximately 2 days per week, part-time. More if needed.

October 5, 2021
Supervisor Robert Crossen
and Honorable Town Board Members
Town of Alabama
2218 Judge Road
Oakfield, New York 14125

SUBJECT: TOWN OF ALABAMA
SITE OBSERVATION SERVICES
PROPOSED PLUG POWER HYDROGEN FACILITY – STAMP
PROFESSIONAL SERVICES PROPOSAL
WENDEL PROJECT NO: 436007

Dear Supervisor Crossen, and Honorable Town Board:

As you are aware, Wendel has been assisting the Town of Alabama with the site plan review of the Plug Power project since April 2021.

Based on the recent conditional approval of the project by Planning Board, the applicant will be proceeding

with construction in the following 4 phases.

- Site Grading and Drainage
- Site Utilities
- Building Foundations
- Building Structure

Through conversations with Town representatives, Wendel has been asked to provide further assistance on

this project. The following letter proposal presents the site observation services that Wendel can provide

during construction of the project.

A. SCOPE OF WORK

The following represents our understanding of the scope of services required of Wendel for this project:
Engineering During Construction

- 1) Review Contractor's Bonds & Insurances provided to the Town.
- 2) Review grading permit application.
- 3) Attend pre-construction meeting.
- 4) Review Contractor schedule.
- 5) Support construction coordination between the Town, Contractor, and other interested agencies.
- 6) Project management of construction observation personnel.
- 7) Make visits to the site at intervals appropriate to the various phases of construction.
- 8) Coordinate contract close-out between the Town and Contractor.
- 9) Provide a monthly written summary of activities to the Town Board.

Resident Observation Services

- 1) Attend field progress meetings between the Town, Contractor and interested agencies as necessary.
- 2) Provide Construction Observer personnel on a part time basis during construction activities
- 3) Provide on site assistance to the Building Inspector as needed.
- 4) Review and observe on-site construction activities.
- 5) Monitor Contractor construction schedules.

B. EXCLUSIONS

The following services are excluded from this proposal. A separate proposal for these services will be presented to the Town for approval as the proposed project progresses toward construction:

- 1) Assistance to the Building Department during the building plan review stage.
- 2)

C. PROPOSAL FEE:

We are proposing to perform the scope of work outlined above on a Time and Expense basis based upon the attached rate schedule. All costs associated with this effort will be reimbursed by the applicant.

Fee Notes:

- 1) Expenses such as mileage, plotting costs, postage, telephone charges are included in the fee.
- 2)

D. TERMS:

This proposal and the attached "Appendix A" (Professional Services Terms and Conditions with Services

During Construction) are intended to represent the entire contractual relationship. Please contact me if you have any questions. If this proposal and attached general conditions are acceptable to you, please indicate your acceptance by signing both originals and return one (1) executed original to our office. We would be pleased to answer questions you may have or to clarify the various points above. We appreciate the opportunity to provide you with this information and look forward to assisting you with the successful completion of this project.

Respectfully Submitted,
Andrew C. Reilly, AICP Robert D. Klavoon, PE
Principal in Charge Project Manager
Enc.

Should Wendel's proposal be accepted, Wendel WD Architecture, Engineering, Surveying & Landscape Architecture P.C., a New York State licensed architecture and engineering firm that is part of a consolidated group of Wendel Companies, will contract to undertake the work. Our letterhead and plans will still prominently say "Wendel" and we will refer to ourselves as Wendel throughout the project.

ACCEPTANCE / AUTHORIZATION:

Accepted this _____ day of _____, 20_____

Print Name: _____

Signature: _____

Title: _____

PROFESSIONAL SERVICES TERMS AND CONDITIONS

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AGREEMENT. It is mutually understood and agreed that the Client's acceptance of the agreement to which these terms and conditions are attached constitutes an incorporation of these terms and conditions which, together with any attached supporting documentation, embody and constitute the entire understanding between the parties with respect to the transaction contemplated hereby and constitute a binding legal agreement ("Agreement"). Each Party represents and warrants to the other that it has the requisite authority to accept, deliver and perform this Agreement. If Wendel is authorized by the Client to provide services set forth in this Agreement or a Change Order, either orally or in writing, prior to formal acceptance of either, such authorization shall be deemed an acceptance of this Agreement effective as of the date Wendel commences providing the services, and such services shall be provided and compensated for in accordance with the terms and conditions contained in this Agreement.

STANDARD OF CARE/PERFORMANCE. Wendel shall perform its services consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances and shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the work. No warranty, guarantee or fiduciary relationship, either express or implied, is made or intended by this Agreement.

OBLIGATIONS OF WENDEL. Wendel will prepare the work and deliverables in a timely manner but it is agreed between the parties that Wendel cannot be responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time this Agreement was entered into. Wendel commits to provide adequate and qualified resources to meet the schedule, and will work with Proposal Recipient's management in a manner that enables management to make informed decisions.

OBLIGATIONS OF PROPOSAL RECIPIENT. Client will work in a diligent and timely manner with Wendel to facilitate the contractual services required herein. To ensure a cooperative and successful effort, Client will commit to open disclosure of information required for the performance of services, will properly position Wendel with its staff, and will make available subject matter

knowledgeable staff in a timely manner to address questions, unforeseen circumstances or other unexpected conditions that may arise.

PAYMENT. Progress payments shall be made in proportion to services performed and shall be due and payable within thirty (30)

days of invoice submittal, without retainage. Overdue invoices shall bear an interest rate of 1-1/2% per month calculated from the 31st day after submittal. Wendel reserves the right to suspend services if payment of any undisputed invoice amounts are sixty (60) days overdue.

CHANGE ORDERS. During the term hereof the scope of services and compensation therefor may be adjusted by mutually agreed

upon written Change Orders hereto.

SUSPENSION AND TERMINATION BY WENDEL. If the Client (i) fails to timely make payments due, or (ii) suspends the work for more than ninety (90) calendar days for reasons other than the fault of Wendel, or (iii) substantially fails to perform in accordance

with the terms of this Agreement through no fault of Wendel, then Wendel may suspend services or terminate this Agreement upon seven (7) days advance written notice to Client, and Client shall pay all sums due for services performed prior to suspension

or termination and any costs attributable to suspension or termination. Upon any resumption of services, Fees and time schedules

shall be equitably adjusted. Wendel may terminate this Agreement for convenience upon not less than seven (7) days written advance notice and Client shall pay all sums due for services performed prior to termination.

SUSPENSION AND TERMINATION BY CLIENT. If the Client suspends the work, Wendel shall be compensated for services performed prior to notice of such suspension and Client will be liable for any expenses incurred in the interruption and resumption

of services. Upon resumption of services, Fees and time schedules shall be equitably adjusted. If the Client terminates this Agreement for its convenience, the Client shall compensate Wendel for Wendel's services performed prior to termination, reimbursable expenses incurred, and costs attributable to termination, including the costs attributable to Wendel's termination of consultant agreements. Client may terminate this Agreement for default upon not less than seven (7) days' advance written notice should Wendel substantially fail to perform in accordance with the terms of this Agreement through no fault of the Client.

HAZARDOUS MATERIALS. To the fullest extent permitted by law, Client shall defend, indemnify and hold harmless Wendel, its affiliates, subconsultants and subcontractors, and their respective officers, directors, partners, employees, and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys,

and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of, or relating to the presence, discharge, release, or escape of asbestos, PCBs, petroleum products, radioactive materials, or any other hazardous materials at, on, under, or from the work site.

OWNERSHIP OF DOCUMENTS. All the documents, reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, drawings, specifications and other documents, data or information prepared by Wendel in any form, including machine

readable format, (collectively "Documents") are instruments of Wendel's services and shall remain the sole property of Wendel. Wendel retains all ownership and all other rights, including copyrights, in all such documents.

LIMITATIONS ON USE OF DOCUMENTS. The Documents are prepared for use for the purpose and at the site identified in the Agreement or Change Order only and are not appropriate for use for any other purpose or site, except by the authorization and

PROFESSIONAL SERVICES TERMS AND CONDITIONS

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agreement in writing with the appropriate compensation to Wendel. Client agrees to release Wendel and its affiliates from any liability associated with any unauthorized changes made to the Documents and their use thereof and further agrees to indemnify

and hold harmless Wendel and its affiliates from any and all claims arising out of such changes or use.

MACHINE READABLE MEDIA. Where Wendel agrees to supply some or all of the Documents in machine readable format (hereinafter "machine readable media"), the parties understand and agree that any Documents supplied in such machine readable format are so supplied as a convenience to the recipient. Such Documents are not intended to replace the printed forms

of such Documents. The content of the Documents supplied by Wendel in printed form shall govern over the contents of Documents supplied in machine readable format. The recipient shall be solely responsible for comparing the output of the machine readable media with the printed Documents designated by Wendel as the contract documents and determining the accuracy of such output. Recipient shall only use the output of machine readable media for the limited purpose agreed to by Wendel and shall not alter, mediate or change the contents of such machine readable media in any way, or transfer to others, without the express written approval of Wendel.

CONFIDENTIALITY. Wendel shall not disclose or permit the disclosure of any confidential information except to its employees of

Wendel and its affiliates, and other consultants who need such confidential information in order to meet contractual obligations under this Agreement.

PUBLICATION. Wendel has the right to photograph the work and to use the photos in the promotion of its professional practice through advertising, public relations, brochure or other marketing materials. Client agrees that Wendel has the authority to utilize

its name as a client and general description of the work or service performed as references. Wendel will be given proper credit and acknowledgements for all services rendered including, but not limited to, planning, design and implementation. Proper credit

shall be defined as being named by the Client (or their agent/owner) in project identification boards, published articles, promotional brochures and similar communications.

DISPUTE RESOLUTION. In an effort to resolve any conflicts that arise during the design or construction of the work or following the completion of the work, the Client and Wendel agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The parties further agree to include a similar mediation provision in all agreements with independent contractors they retained for the work and to require

all independent contractors and consultants to include a similar mediation provision in all agreements with their respective subcontractors, subconsultants, suppliers or fabricators retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. In the event resolution of any conflict cannot be settled as a result of non-binding mediation, it will be addressed in an appropriate court of proper jurisdiction.

LIABILITIES. THE CLIENT AND WENDEL HAVE DISCUSSED THEIR RISKS, REWARDS AND BENEFITS OF THE WORK TO BE PERFORMED, WENDEL'S TOTAL FEE FOR SERVICES AND HAVE ALLOCATED THE RISKS SUCH THAT, UNLESS STATED OTHERWISE ELSEWHERE IN THIS AGREEMENT, THE CLIENT AGREES THAT TO THE FULLEST EXTENT PERMITTED BY LAW, WENDEL'S TOTAL LIABILITY TO THE PROPOSAL RECIPIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, DAMAGES, OR CLAIM EXPENSES

ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING, BUT NOT LIMITED TO, WENDEL'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY WENDEL UNDER THIS AGREEMENT OR \$500,000.00 WHICHEVER IS LESS.

INDEMNITY. Each Party agrees to indemnify the other from liability for losses, damages, or expenses (including reasonable costs and attorney's fees) to the extent caused by the Party's negligent acts, errors, or omissions relating to this Agreement, subject to

any limitations of liability set forth elsewhere herein.

CONSEQUENTIAL DAMAGES. NEITHER PARTY WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

BUDGET/CONTINGENCY. The Client agrees to establish a realistic budget for the cost of the work; the budget will include a contingency fund which will be used solely for the purpose of paying for contractor change orders, addressing omissions from the construction documents, and Client approved Change Orders for Wendel's services.

OPINIONS OF CONSTRUCTION COST. Any opinion of construction cost prepared by Wendel represents its judgement as a design

professional and is supplied for the general guidance of the Client. Since Wendel has no control over the cost of labor and material, or over competitive bidding or market conditions, Wendel does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the Client.

CONSTRUCTION PHASE SERVICES

SITE VISITS. Wendel shall make visits to the site at intervals appropriate to the various phases of construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the drawings and the specifications. Wendel shall not be required to make exhaustive or continuous on-site observations to check the quality of the construction work. Wendel does not guarantee the performance of any contractors. On the basis of on-site observations as a design professional, Wendel shall keep the Client reasonably informed about the progress and quality of the portion of the work completed, and promptly report to the Client (1) known deviations from the contract

PROFESSIONAL SERVICES TERMS AND CONDITIONS

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documents, (2) known deviations from the most recent construction schedule submitted by the contractor, and (3) defects and deficiencies observed in the work.

CONSTRUCTION MEANS AND METHODS. Wendel is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work. Wendel is not responsible for the contractor's failure to execute the work in accordance with the construction contract.

SHOP DRAWING REVIEW. If shop drawing review is included in the services, Wendel shall review shop drawings, samples, and other submissions of the contractor only for general conformance to design concept.

FAST TRACK. In the case of the Client requesting the fast-track and phased project delivery method in which design services

overlap construction, and recognizing the inherent risks of fast tracking to the design professional, Wendel will not be responsible

for any design changes, design omissions, coordination errors, delays, disruptions, damages, liabilities, additional costs or modifications to work already in place that may result from a decision to accelerate the design and construction process. As an additional service, Wendel will be compensated for all changes in services to modify, correct or adjust the construction documents and coordinate them with other disciplines in order to meet a project's scope, program cost or schedule requirements

because of the Client's decision to design and build the project in a fast track manner.

OTHER CLAUSES

FORCE MAJEURE. Neither Party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other or the other's employees and agents.

PURCHASE ORDERS. Client acknowledges and agrees that any purchase order issued by Client in accordance with this Agreement

is intended only to establish payment authority for Client's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement.

WAIVER. No waiver by either Party hereto or any failure or refusal by the other Party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such Party to so comply.

GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the state in which the work or Project is located, without regard to principles of conflict of laws.

THIRD PARTY BENEFICIARIES. This Agreement is made solely for the benefit of the Client and Wendel, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement.

CONFIDENTIAL

Personnel Classification	Minimum Billing Rate	Maximum Billing Rate
Principal	\$ 210	\$ 445
Program Manager	\$ 185	\$ 290
Sr. Project Manager	\$ 190	\$ 290
Project Manager	\$ 115	\$ 290
Project Coordinator	\$ 125	\$ 150
Project Administrative Assistant	\$ 75	\$ 100
Intern	\$ 50	\$ 70
Sr. Architect	\$ 210	\$ 235
Architect 7	\$ 195	\$ 260
Architect 6	\$ 180	\$ 195
Architect 5	\$ 145	\$ 170
Architect 4	\$ 125	\$ 140
Personnel Classification	Minimum Billing Rate	Maximum Billing Rate
Architect 3	\$ 105	\$ 125
Architect 2	\$ 90	\$ 110
Architect 1	\$ 75	\$ 85
Interior Designer 7	\$ 210	\$ 230
Interior Designer 6	\$ 170	\$ 190
Interior Designer 5	\$ 145	\$ 170
Interior Designer 4	\$ 110	\$ 135
Interior Designer 3	\$ 90	\$ 110
Interior Designer 2	\$ 85	\$ 125
Interior Designer 1	\$ 70	\$ 70
Designer 4	\$ 140	\$ 160
Designer 3	\$ 100	\$ 110
Designer 2	\$ 100	\$ 110
CAD Drafter	\$ 80	\$ 105

Healthcare Planner	\$ 190	\$ 210
Emergency Services Specialist	\$ 100	\$ 125
Director of Sustainability	\$ 145	\$ 185
Sr, Landscape Architect	\$ 175	\$ 225
Landscape Architect 4	\$ 130	\$ 170
Landscape Architect 3	\$ 115	\$ 135
Landscape Architect 2	\$ 100	\$ 120
Landscape Architect 1	\$ 85	\$ 110
Sr. Construction Manager	\$ 195	\$ 210
Construction Manager	\$ 120	\$ 195
Assistant Construction Manager	\$ 135	\$ 150
Energy Engineer 8	\$ 285	\$ 335
Energy Engineer 7	\$ 225	\$ 290
Energy Engineer 6	\$ 215	\$ 260
Energy Engineer 5	\$ 180	\$ 240
Energy Engineer 4	\$ 150	\$ 190
Energy Engineer 3	\$ 125	\$ 180
Energy Engineer 2	\$ 100	\$ 140
Energy Engineer 1	\$ 90	\$ 110
Sr. Engineer	\$ 240	\$ 250
Engineer 7	\$ 235	\$ 245
Engineer 6	\$ 180	\$ 230
Engineer 5	\$ 160	\$ 180
Engineer 4	\$ 140	\$ 185
Engineer 3	\$ 120	\$ 140
Engineer 2	\$ 105	\$ 115
Engineer 1	\$ 100	\$ 110
Drafter	\$ 70	\$ 100
GIS Analyst	\$ 135	\$ 145
Survey Party Chief	See Survey rate sheet	
Instrument Person	See Survey rate sheet	
Construction Observer	\$ 110	\$ 120

Prints: 24" x 36" and 22" x 34"	\$0.85/ft.
Prints: 8 ½" x 11, 8 ½" x 14, 11" x 17"	\$0.90/ea.
Prints: 12", 24", 30", and 36" Roll	\$1.15/ft.
Color Prints: 8 ½" x 11	\$1.00/ea.
Color Prints: 8 ½" x 14" or 11" x 17"	\$2.00/ea.
Color Line and Map Work: (30% coverage) Bond	\$1.75/ft.
Color Line and Map Work: (30% coverage) Mylar	\$2.83/ft.
Graphic Work: (90% coverage) Bond	\$3.77/ft.
Graphic Work: (90% coverage) Mylar	\$6.52/ft.
Photocopy	\$0.15/copy
Postage At Cost	
Mileage: Current IRS Rate	

The rates noted hereon are effective for twelve months from 08 / 31 / 21 Affter the twelve-month period, the rates noted are subject to increase based on salary adjustments.

Confidentiality Notice: The information contained in this document is privileged and confidential. Any distribution, copying or disclosure of the information is prohibited.

MOTION by Councilperson Fisher, seconded by Councilperson Veazey to approve the Site Observation Services Proposal for the Plug Power Hydrogen Facility on the STAMP Site.

Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Wendel Engineering Agreement

TOWN/MUNICIPAL AGREEMENT

THIS AGREEMENT made this XX day of XXXXXXXX, 2021, by and between the Town of Alabama, a municipal corporation hereinafter referred to as the TOWN, and Wendel WD Architecture, Engineering, Surveying & Landscape Architecture, P.C., hereinafter referred to as WENDEL.

W I T N E S S E T H

WHEREAS, the TOWN desires to have annual engineering services performed for it to meet its day to day requirements, and

WHEREAS, WENDEL is an engineering firm duly licensed in New York State and has offered to perform the services hereinafter set forth.

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the TOWN and WENDEL do hereby agree as follows:

1. During the term of this Agreement, WENDEL agrees to furnish the following engineering and planning services for the TOWN:

a. Be represented by the designated qualified person at Town Board meetings or such other meetings determined by the TOWN, and review minutes of any or all meetings as designated by the TOWN. Research topics for presentation at Board meetings as directed by the TOWN.

b. Attend Planning Board and Zoning Board of Appeals meetings as necessary and consult for site plan review.

c. Provide consultation for SEQR proceedings for Unlisted & Type I actions (not requiring an Environmental Impact Statement), as defined by said proceedings.

d. Perform engineering support services for minor projects being led and coordinated by the TOWN, and which do not normally require regulatory agency approvals. These engineering services are intended to include but not limited to the preparation of preliminary reports which detail the scope of needed services, engineering sketches, review of draft specifications, necessary conferences with the TOWN, consultation during construction, and such other engineering services as may be required in order to enable the completion of the project in a manner contemplated by the TOWN, generally with TOWN work forces.

e. Provide the TOWN, its departments, boards, commissions, agents and employees, general municipal engineering services during normal working hours. Normal working hours are defined as between the hours of 8:00 A.M. and 5:00 P.M. General engineering services shall normally not require WENDEL to be present in the TOWN.

f. Attend information meetings of Federal, State and County agencies designated by WENDEL and alert the TOWN to events and/or decisions that may affect the TOWN.

g. Follow aid programs and advise the TOWN of programs that may be of benefit to the TOWN.

h. Provide assistance with grant applications and supporting documentation as requested by the Town.

- i. Provide design or consultation for regulatory agency approvals of actions or projects, design of capital improvements for public bid or bid in accordance with the Town procurement policy if public bids are not required.
- j. Attend Public Information meetings, Regulatory meetings, or other specific purpose meetings, requiring the presence or input of the engineer as determined by the Town.
- k. Provide engineering feasibility reports, studies, schematic designs for the operation, maintenance or improvement of Town infrastructure, including preventive maintenance consultation.
- l. Provide engineering expertise for the Town to support negotiation of contracts identified by the Town and Town Attorney.
- m. Consultation for SEQR proceedings for actions requiring an Environmental Impact Statement as defined by said proceedings.
- n. Review of developer proposals.
- o. Design of capital improvements for public bid.
- p. Preparation of aid applications.
- q. Perform Public Improvement Project Plan review and inspections as necessary.
- r. Provide professional design or consultation services such as, but not necessarily limited to civil, environmental, mechanical, electrical and structural engineering, architecture, land surveying, planning, geographic information systems, energy management, or other such services desired by the TOWN and able to be provided by WENDEL
- s. Provide consultation and design services for parks, highway, drainage and building improvements as identified by the TOWN.
- t. Design, Survey, and Construction Services associated with Locally Administered Federal Aid Projects.
- u. Provide engineering services during construction as requested by the TOWN.
- v. Additional meetings as requested by the TOWN.

2. WENDEL shall complete Items a through v on a time and expense basis with authorization of the TOWN when a specific scope can be identified.

3. This Agreement shall become effective as of the 1st day of October 2021 and terminate the 31st day of December, 2022.

4. It is understood and agreed that all records, data and maps shall become the property of the TOWN but that WENDEL may keep such records at their place of business to facilitate the performance of the services to be rendered hereunder. WENDEL shall deliver such records to the TOWN as it may request and upon payment of current amounts due under this Agreement. Design drawings and specifications are not included under this section. Ownership of design drawings and specifications are covered under Appendix A of this Agreement.

5. It is further understood and agreed that all data pertaining to any existing systems or proposed systems and their operations shall be made available to WENDEL as the same may be in the physical control of the TOWN.

6. WENDEL states that our work will conform to generally accepted engineering principles and to the best of our professional knowledge and belief will comply with all State, Federal and Local Laws, and we make no other warranty, guarantee or certification either expressed or implied.

7. WENDEL agrees to hold harmless and to indemnify the Owner against any liability arising only out of the negligent acts, errors, or omissions of WENDEL. This indemnification, however, does not include liability arising out of claims relating to asbestos or hazardous waste. Nothing in this agreement shall impose liability on WENDEL for claims, lawsuits, expenses or damages arising from, or in any manner related to, the exposure to, or the handling, manufacture or disposal of, asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the EPA.

8. WENDEL, and its individual representatives, when acting as the Town Engineer, and acting in good faith in the discharge of the TOWN's duties, shall not be rendered liable for and are relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission by WENDEL in the discharge by WENDEL of the TOWN's duties. Any suit brought against WENDEL because of the acts or omissions by WENDEL in the enforcement of any provisions of the

codes, laws, standards, statutes, and/or regulations shall be defended by the TOWN until final termination of the proceedings. WENDEL, and its individual representatives, shall be entitled to all defenses and municipal immunities that are, or would be, available to the TOWN if the same services were provided by the TOWN employees, as permitted by law.

9. This Agreement is subject to the general terms and conditions as listed on Attachment A enclosed and made part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

Town of Alabama

By: _____
Robert Crossen, Town of Alabama Supervisor

Wendel WD Architecture, Engineering, Surveying & Landscape Architecture, P.C.

By: _____
Jesse F. Wendell
Vice President of Engineering

ATTACHMENT A: PROFESSIONAL SERVICES TERMS AND CONDITIONS

PROFESSIONAL SERVICES TERMS AND CONDITIONS

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AGREEMENT. It is mutually understood and agreed that the Client's acceptance of the agreement to which these terms and conditions are attached constitutes an incorporation of these terms and conditions which, together with any attached supporting documentation, embody and constitute the entire understanding between the parties with respect to the transaction contemplated hereby and constitute a binding legal agreement ("Agreement"). Each Party represents and warrants to the other that it has the requisite authority to accept, deliver and perform this Agreement. If Wendel is authorized by the Client to provide services set forth in this Agreement or a Change Order, either orally or in writing, prior to formal acceptance of either, such authorization shall be deemed an acceptance of this Agreement effective as of the date Wendel commences providing the services, and such services shall be provided and compensated for in accordance with the terms and conditions contained in this Agreement.

STANDARD OF CARE/PERFORMANCE. Wendel shall perform its services consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances and shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the work. No warranty, guarantee or fiduciary relationship, either express or implied, is made or intended by this Agreement.

OBLIGATIONS OF WENDEL. Wendel will prepare the work and deliverables in a timely manner but it is agreed between the parties that Wendel cannot be responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time this Agreement was entered into. Wendel commits to provide adequate and qualified resources to meet the schedule, and will work with Proposal Recipient's management in a manner that enables management to make informed decisions.

OBLIGATIONS OF PROPOSAL RECIPIENT. Client will work in a diligent and timely manner with Wendel to facilitate the contractual services required herein. To ensure a cooperative and successful effort, Client will commit to open disclosure of information required for the performance of services, will properly position Wendel with its staff, and will make available subject matter knowledgeable staff in a timely manner to address questions, unforeseen circumstances or other unexpected conditions that may arise.

PAYMENT. Progress payments shall be made in proportion to services performed and shall be due and payable within thirty (30) days of invoice submittal, without retainage. Overdue invoices shall bear an interest rate of 1-1/2% per month calculated from the 31st day after submittal. Wendel reserves the right to suspend services if payment of any undisputed invoice amounts are sixty (60) days overdue.

CHANGE ORDERS. During the term hereof the scope of services and compensation therefor may be adjusted by mutually agreed upon written Change Orders hereto.

SUSPENSION AND TERMINATION BY WENDEL. If the Client (i) fails to timely make payments due, or (ii) suspends the work for more than ninety (90) calendar days for reasons other than the fault of Wendel, or (iii) substantially fails to perform in accordance with the terms of this Agreement through no fault of Wendel, then Wendel may suspend services or terminate this Agreement upon seven (7) days advance written notice to Client, and Client shall pay all sums due for services performed prior to suspension or termination and any costs attributable to suspension or termination. Upon any resumption of services, Fees and time schedules shall be equitably adjusted. Wendel may terminate this Agreement for convenience upon not less than seven (7) days written advance notice and Client shall pay all sums due for services performed prior to termination.

SUSPENSION AND TERMINATION BY CLIENT. If the Client suspends the work, Wendel shall be compensated for services performed prior to notice of such suspension and Client will be liable for any expenses incurred in the interruption and resumption of services. Upon resumption of services, Fees and time schedules shall be equitably adjusted. If the Client

terminates this Agreement for its convenience, the Client shall compensate Wendel for Wendel's services performed prior to termination, reimbursable expenses incurred, and costs attributable to termination, including the costs attributable to Wendel's termination of consultant agreements. Client may terminate this Agreement for default upon not less than seven (7) days' advance written notice should Wendel substantially fail to perform in accordance with the terms of this Agreement through no fault of the Client.

HAZARDOUS MATERIALS. To the fullest extent permitted by law, Client shall defend, indemnify and hold harmless Wendel, its affiliates, subconsultants and subcontractors, and their respective officers, directors, partners, employees, and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of, or relating to the presence, discharge, release, or escape of asbestos, PCBs, petroleum products, radioactive materials, or any other hazardous materials at, on, under, or from the work site.

OWNERSHIP OF DOCUMENTS. All the documents, reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, drawings, specifications and other documents, data or information prepared by Wendel in any form, including machine readable format, (collectively "Documents") are instruments of Wendel's services and shall remain the sole property of Wendel. Wendel retains all ownership and all other rights, including copyrights, in all such documents.

LIMITATIONS ON USE OF DOCUMENTS. The Documents are prepared for use for the purpose and at the site identified in the Agreement or Change Order only and are not appropriate for use for any other purpose or site, except by the authorization and agreement in writing with the appropriate compensation to Wendel. Client agrees to release Wendel and its affiliates from any liability associated with any unauthorized changes made to the Documents and their use thereof and further agrees to indemnify and hold harmless Wendel and its affiliates from any and all claims arising out of such changes or use.

MACHINE READABLE MEDIA. Where Wendel agrees to supply some or all of the Documents in machine readable format (hereinafter "machine readable media"), the parties understand and agree that any Documents supplied in such machine readable format are so supplied as a convenience to the recipient. Such Documents are not intended to replace the printed forms of such Documents. The content of the Documents supplied by Wendel in printed form shall govern over the contents of Documents supplied in machine readable format. The recipient shall be solely responsible for comparing the output of the machine readable media with the printed Documents designated by Wendel as the contract documents and determining the accuracy of such output. Recipient shall only use the output of machine readable media for the limited purpose agreed to by Wendel and shall not alter, mediate or change the contents of such machine readable media in any way, or transfer to others, without the express written approval of Wendel.

CONFIDENTIALITY. Wendel shall not disclose or permit the disclosure of any confidential information except to its employees of Wendel and its affiliates, and other consultants who need such confidential information in order to meet contractual obligations under this Agreement.

PUBLICATION. Wendel has the right to photograph the work and to use the photos in the promotion of its professional practice through advertising, public relations, brochure or other marketing materials. Client agrees that Wendel has the authority to utilize its name as a client and general description of the work or service performed as references. Wendel will be given proper credit and acknowledgements for all services rendered including, but not limited to, planning, design and implementation. Proper credit shall be defined as being named by the Client (or their agent/owner) in project identification boards, published articles, promotional brochures and similar communications.

DISPUTE RESOLUTION. In an effort to resolve any conflicts that arise during the design or construction of the work or following the completion of the work, the Client and Wendel agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The parties further agree to include a similar mediation provision in all agreements with independent contractors they retained for the work and to require all independent contractors and consultants to include a similar mediation provision in all agreements with their respective subcontractors, subconsultants, suppliers or fabricators retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. In the event resolution of any conflict cannot be settled as a result of non-binding mediation, it will be addressed in an appropriate court of proper jurisdiction.

LIABILITIES. THE CLIENT AND WENDEL HAVE DISCUSSED THEIR RISKS, REWARDS AND BENEFITS OF THE WORK TO BE PERFORMED, WENDEL'S TOTAL FEE FOR SERVICES AND HAVE ALLOCATED THE RISKS SUCH THAT, UNLESS STATED OTHERWISE ELSEWHERE IN THIS AGREEMENT, THE CLIENT AGREES THAT TO THE FULLEST EXTENT PERMITTED BY LAW, WENDEL'S TOTAL LIABILITY TO THE PROPOSAL RECIPIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, DAMAGES, OR CLAIM EXPENSES ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING, BUT NOT LIMITED TO, WENDEL'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY WENDEL UNDER THIS AGREEMENT OR \$500,000.00 WHICHEVER IS LESS.

INDEMNITY. Each Party agrees to indemnify the other from liability for losses, damages, or expenses (including reasonable costs and attorney's fees) to the extent caused by the Party's negligent acts, errors, or omissions relating to this Agreement, subject to any limitations of liability set forth elsewhere herein.

CONSEQUENTIAL DAMAGES. NEITHER PARTY WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

BUDGET/CONTINGENCY. The Client agrees to establish a realistic budget for the cost of the work; the budget will include a contingency fund which will be used solely for the purpose of paying for contractor change orders, addressing omissions from the construction documents, and Client approved Change Orders for Wendel's services.

OPINIONS OF CONSTRUCTION COST. Any opinion of construction cost prepared by Wendel represents its judgement as a design professional and is supplied for the general guidance of the Client. Since Wendel has no control over the cost of labor and material, or over competitive bidding or market conditions, Wendel does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the Client.

CONSTRUCTION PHASE SERVICES

SITE VISITS. Wendel shall make visits to the site at intervals appropriate to the various phases of construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the drawings and the specifications. Wendel shall not be required to make exhaustive or continuous on-site observations to check the quality of the construction work. Wendel does not guarantee the performance of any contractors. On the basis of on-site observations as a design professional, Wendel shall keep the Client reasonably informed about the progress and quality of the portion of the work completed, and promptly report to the Client (1) known deviations from the contract documents, (2) known deviations from the most recent construction schedule submitted by the contractor, and (3) defects and deficiencies observed in the work.

CONSTRUCTION MEANS AND METHODS. Wendel is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work. Wendel is not responsible for the contractor's failure to execute the work in accordance with the construction contract.

SHOP DRAWING REVIEW. If shop drawing review is included in the services, Wendel shall review shop drawings, samples, and other submissions of the contractor only for general conformance to design concept.

FAST TRACK. In the case of the Client requesting the fast-track and phased project delivery method in which design services overlap construction, and recognizing the inherent risks of fast tracking to the design professional, Wendel will not be responsible for any design changes, design omissions, coordination errors, delays, disruptions, damages, liabilities, additional costs or modifications to work already in place that may result from a decision to accelerate the design and construction process. As an additional service, Wendel will be compensated for all changes in services to modify, correct or adjust the construction documents and coordinate them with other disciplines in order to meet a project's scope, program cost or schedule requirements because of the Client's decision to design and build the project in a fast track manner.

OTHER CLAUSES

FORCE MAJEURE. Neither Party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other or the other's employees and agents.

PURCHASE ORDERS. Client acknowledges and agrees that any purchase order issued by Client in accordance with this Agreement is intended only to establish payment authority for Client's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement.

WAIVER. No waiver by either Party hereto or any failure or refusal by the other Party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such Party to so comply.

GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the state in which the work or Project is located, without regard to principles of conflict of laws.

THIRD PARTY BENEFICIARIES. This Agreement is made solely for the benefit of the Client and Wendel, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement.

MOTION by Councilperson LaGrou, seconded by Councilperson Klotzbach to approve the Engineering Agreement with Wendel for a one-year period and have Supv. Crossen sign it.
Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Plug Power Amended Host Community Investment Agreement

Plug Power changed the company name from Plug Power Inc. to Plug Power Project Holding LLC. Disc. held.

HOST COMMUNITY INVESTMENT AGREEMENT

THIS HOST COMMUNITY INVESTMENT AGREEMENT (the "Community Investment Agreement"), dated as of the 8th day of October, 2021, by and between the **TOWN OF ALABAMA**, a municipal corporation, with offices at 2218 Judge Road, Oakfield, New York 14125 (the "Town") on behalf of the Town Board and **PLUG PROJECT HOLDING CO., LLC**, a Delaware limited liability company, having an address c/o Plug Power Inc., 968 Albany Shaker Road, Latham, New York 12110 (the "Company").

WITNESSETH:

WHEREAS, the Town has an obligation to promote the health and welfare of its residents, and to protect their real and personal property within the town; and

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

WHEREAS, the Company has undertaken a capital project at the WNY STAMP site in the Town of Alabama, Genesee County consisting of the acquisition of approximately 30 acres and the construction of a green hydrogen production facility (the "Facility"); and

WHEREAS, the Company recognizes that such project (the "Project") will impact the surrounding community, particularly the Town of Alabama, Genesee County, New York; and

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

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

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

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 Town.

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

(a) The Town is a municipal corporation duly established and validly existing under the laws of the State of New York and has the power to enter into the transaction contemplated by this Community Investment Agreement and to carry out its obligations hereunder.

(b) The Town has been duly authorized by a resolution duly adopted by the Town Board to authorize the Supervisor 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, of any agreement or instrument to which the Town is a party or by which it is bound, or will constitute default under any of the foregoing.

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 formed, 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 Town, 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 Host 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 Town (at its address noted above) an annual benefit fee (the "Annual Host Community 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 Host Community Investment Fee.* The Company, pursuant to the terms of this Community Investment Agreement, shall remit to the Town an Annual Host Community 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 Host Community Investment Fee due pursuant to this Community Investment Agreement within thirty (30) days following notice from the Town 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 Town and/or any duly appointed agent or assignee thereof. The revenues paid by the Company to the Town, which shall be utilized at the sole and absolute discretion of the Town, are to be provided for (but not limited to) the following purposes;

(i) for capital improvements (including equipment) for water, sewer, drainage or construction of public facilities (i.e. town hall, highway facilities) or to pay debt service for capital improvements for those purposes

(ii) for improvements to fire protection

(iii) for purposes of tax stabilization

Article III - Transfer of Facility; Termination; Default.

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 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.

Section 3.2. Reference is made to that certain Tax Agreement by and between the Agency (as hereinafter defined) and the Company (as it may be amended, restated or replaced from time to time, the "Tax Agreement"), pursuant to which the Company is eligible for an exemption from the payment of Real Estate Taxes (as defined in the Tax Agreement). 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 no longer eligible for an exemption from the payment of Real Estate Taxes under the Tax Agreement (a "Tax Exemption Termination Event"), the obligations of the Company to make payments hereunder shall, to such extent, be null and void except as otherwise expressly provided below.

Notwithstanding the foregoing provisions of this Section 3.2, if for any period from and after the occurrence of a Tax Exemption Termination Event the Company is continuing to operate the Facility, then: (a) the Company shall continue to make payments hereunder during such period; and (b) if the total amount of Real Estate Tax levied by the Town against the Facility for any tax year during such period is less than the Total Tax Payment set forth in the Tax Agreement with respect to such tax year, the Company shall pay to the Town an amount equal to the differential between the total amount of Real Estate Tax so levied and such Total Tax Payment, which payment shall be made in the manner provided in the Tax Agreement (as if it remained in effect); provided, however, that the Company shall have no obligation to make the payments described in clauses (a) and (b) above from and after the expiration or earlier termination of this Community Investment Agreement or at any time that the Company has ceased operating the Facility.

Article IV - Miscellaneous.

Section 4.1. 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 4.2. 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 Town:

Town of Alabama
2218 Judge Road
Oakfield, New York 14125
Attention: Town Supervisor
E-mail:

To Town Counsel:

Boylan Law Office, LLP
45 West Main Street
LeRoy, New York 14482

Attn: Mark S. Boylan, Esq.

E-mail:

To the Company:

Plug Project Holding Co., LLC

c/o Plug Power Inc.

968 Albany Shaker Road

Latham, New York 12110

Attn.: Jerry Kahil

E-mail: jkahil@plugpower.com

To Company Counsel:

Plug Project Holding Co., LLC

c/o Plug Power Inc.

968 Albany Shaker Road

Latham, New York 12110

Attn: Gerard L. Conway, Jr., Esq.

E-mail: gconway@plugpower.com

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 4.3. 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 4.4. The Town, 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 Town of its obligations hereunder. In the event of such assignment, the Town 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, 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 Town 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 Town in writing in the event of such assignment.

Section 4.5. (a) The obligations and agreements of the Town contained herein shall be deemed the obligations and agreements of the Town, and not of any member, officer, agent or employee of the Town in his individual capacity, and the members, officers, agents and employees of the Town 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.

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.

(b) No order or decree of specific performance with respect to any of the obligations of the Town hereunder shall be sought or enforced against the Town unless (1) the party seeking such order or decree shall first have requested the Town 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 Town 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 Town refuses to comply with such request and the Town'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 Town, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Town refuses to comply with such request and the Town'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 Town 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 Town, furnish to the Town satisfactory security to protect the Town 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.

Section 4.5. This Community Investment Agreement shall be binding upon and shall inure to the benefit to each of the parties hereto, and their successors and permitted assigns; including, but not limiting to, the sale or transfer of all or any part of the Company.

Section 4.6. Each of the Town and the Company waives claims against each other for, and neither shall be liable to the other for, consequential, incidental, special or punitive damages in connection with the performance or failure to perform this Community Investment Agreement.

[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.

TOWN OF ALABAMA

By: _____
Robert Crossen, Town Supervisor

PLUG PROJECT HOLDING CO., LLC

By: _____

Name: Gerard L. Conway, Jr.

Title: Corporate Secretary

JOINDER

In consideration of Town's execution of that certain Community Investment Agreement (as amended, the "**Community Investment Agreement**") to which this "**Joinder**" is attached (and of which it forms a part), the undersigned Plug Power Inc., a Delaware corporation ("**Plug Parent**"), hereby joins in the Community Investment Agreement solely for the purpose of agreeing that it shall make any payment required to be made by the Company under the Community Investment Agreement if such payment is not made by the last day of any applicable cure period within which said payment can be made without penalty. Capitalized terms used in this Joinder and not otherwise defined herein shall have the same meanings as set forth in the Community Investment Agreement.

In the event the Company assigns its interest in the Community Investment Agreement in connection with the permitted assignment or sublease of the Leaseback Agreement, then the assignee or sublessee of the Leaseback Agreement shall provide a replacement guarantor (a "**Replacement Guarantor**") reasonably acceptable to the Town; provided, it shall be unreasonable for the Town to withhold its approval of a proposed Replacement Guarantor that has a Net Worth equal to at least 100% of the remaining payments to be made under Article II of the Community Investment Agreement. As used herein, the term "**Net Worth**" shall mean the difference between (x) the total amount of the tangible assets of a proposed Replacement Guarantor as reflected on the balance sheets of such proposed Replacement Guarantor prepared in accordance with generally accepted accounting principles, consistently applied and (y) the total amount of liabilities of a proposed Replacement Guarantor in such amounts as reflected on the balance sheets of such proposed Replacement Guarantor prepared in accordance with generally accepted accounting principles, consistently applied. Concurrently with any such assignment or sublease of the Leaseback Agreement, the Replacement Guarantor shall execute a joinder to the Community Investment Agreement in form and substance consistent with this Joinder (a "**Substitute Joinder**"). Upon such Replacement Guarantor's execution of the Substitute Joinder, Plug Parent shall be released from all obligations under this Joinder accruing after the date of Replacement Guarantor's execution of the Substitute Joinder.

Notwithstanding anything to the contrary, this Joinder shall terminate and be of no further force and effect upon the completion of the Project (as defined in the Leaseback Agreement).

[Remainder of Page Intentionally Left Blank]

[Signature Page to Joinder to Community Investment Agreement]

PLUG POWER INC.

By: _____

Name:

Title:

SCHEDULE A

TO

HOST COMMUNITY INVESTMENT AGREEMENT

DATED AS OF JUNE 1, 2021

BETWEEN

TOWN OF ALABAMA

AND

PLUG PROJECT HOLDING CO., LLC

<u>Payment Year</u>	<u>Payment Due Date</u>	<u>Total Payment Amount</u>
Year 1	January 1, 2023	\$ 178,000
Year 2	January 1, 2024	\$ 178,000
Year 3	January 1, 2025	\$ 178,000
Year 4	January 1, 2026	\$ 178,000
Year 5	January 1, 2027	\$ 178,000
Year 6	January 1, 2028	\$ 178,000
Year 7	January 1, 2029	\$ 178,000
Year 8	January 1, 2030	\$ 178,000
Year 9	January 1, 2031	\$ 178,000
Year 10	January 1, 2032	\$ 178,000
Year 11	January 1, 2033	\$ 178,000
Year 12	January 1, 2034	\$ 178,000
Year 13	January 1, 2035	\$ 178,000
Year 14	January 1, 2036	\$ 178,000
Year 15	January 1, 2037	\$ 178,000
Year 16	January 1, 2038	\$ 178,000
Year 17	January 1, 2039	\$ 178,000
Year 18	January 1, 2040	\$ 178,000
Year 19	January 1, 2041	\$ 178,000
Year 20	January 1, 2042	\$ 178,000
TOTAL		\$3,560,000

MOTION by Councilperson Veazey, seconded by Councilperson Fisher to approve the amended Host Community Investment Agreement with Plug Power Inc., aka Plug Power Holding Co., LLC and have Supv. Crossen sign it. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – no C. Veazey – yes Supv. Crossen – yes

Water District #2

Water Dist. #2 loan closing -- \$6.685 million borrowed at 1.37% interest.

There will be approx. \$100,000-\$150,000 left in the contingency funds. If we don't spend it, it will be returned to USDA. Disc. held on items to spend the money on.

\$8,000 upgrades to vaults – grading, sealing, blocks, etc.

Septic system damaged during water line installation needs to be fixed.

Small articulating loader w/snow blower attachment, can use it for clearing the hydrants. Can cost up to \$150,000.

Water Dist. #2 EDU's will be looked at. Large water users will be assessed more EDUs.

Court -- nothing new.

Town Hall – nothing new.

Executive Session

MOTION by Councilperson LaGrou, seconded by Councilperson Klotzbach to go into executive session at 7:55 p.m. to discuss matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation; and/or Negotiations and updates subject to NDAs regarding the IZA; and/or Negotiations regarding the Teamsters Contract with Attorney Boylan and Mark Masse.

Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

MOTION by Councilperson LaGrou, seconded by Councilperson Klotzbach to come out of executive session at 8:36 p.m. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Solar – nothing new

Union Contract Negotiation – nothing new

Approval of Minutes

9/13/21, 9/20/21 & 9/29/21 Board Meetings – MOTION by Councilperson Fisher, seconded by Councilperson Veazet to accept minutes as presented. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Supervisors Report

10/3/21 -- MOTION by Councilperson LaGrou, seconded by Councilperson Klotzbach to accept report as written. Approved by Roll Call Vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Audit Bills

MOTION by Councilperson Fisher, seconded by Councilperson LaGrou to accept Abstract #010-2021 and pay bills in the amount of \$44,687.00 vouchers 202 to 214 General Fund; \$66,630.86 vouchers 131 to 144 Highway Fund; \$115,218.81 vouchers 36 to 40 Water District 2; \$5,021.16 vouchers 25 to 27 Water District 1. Approved by Roll Call Vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Budget Amendment

MOTION by Councilperson LaGrou, seconded by Councilperson Fisher to add \$100,000.00 to A1420.42, the STAMP Law line for Plug Power expenses. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Town Clerk's Report

September 2021 -- MOTION by Councilperson LaGrou, seconded by Councilperson Klotzbach to accept report as written. Approved by Roll Call Vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Assessor's Report

August 2021 Transfers -- MOTION by Councilperson Veazey seconded by Councilperson Fisher to accept report as written. Approved by Roll Call Vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

CEO/ZEO Report

September 2021 -- MOTION by Councilperson Fisher seconded by Councilperson Klotzbach to accept report as written. Approved by Roll Call Vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Alabama Fire Dept.

MOTION by Councilperson LaGrou, seconded by Councilperson Veazey to approve the following:

- Mark A. Smith
- Brianna Smith
- Gary R. Patnode
- Joshua Mullen
- Robert Kehlenbeck

as a new members at the Alabama Fire Department. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Water Dist. #2 Municipal Solutions Amendment 4

Disc. held on the additional \$3,000 request.

MOTION By Councilperson Fisher, seconded by Councilperson LaGrou to approve Municipal Solutions Amendment 4 of the Original Contract dated April 12, 2017 for Water District No. 2 and have Supv. Crossen sign it. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

2022 Fire Dept. Budget

Alabama Fire Dept. -- Wendy Thompson, President of the AFD spoke to the Board on the requested 2022 budget amount.

MOTION by Councilperson Klotzbach, seconded by Councilperson LaGrou to accept the Alabama Fire Dept. 2022 budget in the amount of \$101,700. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

East Pembroke Fire Dist. – no figures yet.

Audit Update

Waiting for revised appraisal to delete roads and add Water Districts 1 and 2. Appraiser to charge \$400 for the changes.

Website – nothing new

2022 Budget Review

Highway – Disc. held on purchasing a F600 Truck instead of a big truck, to take care of intersections, small, dead end streets where the full size trucks can’t fit or turn around. Disc. held. Approx. cost is \$140,000. Can also use for cleaning out fire hydrants. Possible financing options: using Cares Act money or using remaining funds from Water Dist. 2 to purchase.

Budget Meeting

MOTION by Councilperson LaGrou, seconded by Councilperson Klotzbach to have a second meeting at 7:00 p.m., Monday, October 25, 2021. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Court Prosecutor – Councilperson LaGrou sent an email to the justices asking about the Town Prosecutor. She read the response to the Board.

MOTION by Councilperson Veazey, seconded by Councilperson Fisher to adjourn meeting at 9:32 p.m. Approved by roll call vote:

C. Fisher – yes C. LaGrou – yes C. Klotzbach – yes C. Veazey – yes Supv. Crossen – yes

Respectfully Submitted,

Rebecca L. Borkholder
Town Clerk