
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2024

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM TO

Commission File Number: 1-34392

PLUG POWER INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

22-3672377
(I.R.S. Employer
Identification Number)

125 VISTA BOULEVARD, SLINGERLANDS, NEW YORK 12159
(Address of Principal Executive Offices, including Zip Code)

(518) 782-7700
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$.01 per share	PLUG	The NASDAQ Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The number of shares of common stock, par value of \$.01 per share, outstanding as of August 3, 2024 was 879,636,025 shares.

INDEX to FORM 10-Q

	<u>Page</u>
<u>PART I. FINANCIAL INFORMATION</u>	
Item 1 – Interim Condensed Consolidated Financial Statements (Unaudited)	3
Condensed Consolidated Balance Sheets	3
Condensed Consolidated Statements of Operations	4
Condensed Consolidated Statements of Comprehensive Loss	5
Condensed Consolidated Statements of Stockholders' Equity	6
Condensed Consolidated Statements of Cash Flows	7
Notes to Interim Condensed Consolidated Financial Statements	8
Item 2 – Management's Discussion and Analysis of Financial Condition and Results of Operations	37
Item 3 – Quantitative and Qualitative Disclosures About Market Risk	60
Item 4 – Controls and Procedures	60
<u>PART II. OTHER INFORMATION</u>	
Item 1 – Legal Proceedings	61
Item 1A – Risk Factors	61
Item 2 – Unregistered Sales of Equity Securities and Use of Proceeds	62
Item 3 – Defaults Upon Senior Securities	62
Item 4 – Mine Safety Disclosures	62
Item 5 – Other Information	62
Item 6 – Exhibits	64
Signatures	66

PART 1. FINANCIAL INFORMATION

Item 1 — Interim Financial Statements (Unaudited)

Plug Power Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(In thousands, except share and per share amounts)
(Unaudited)

	June 30, 2024	December 31, 2023
Assets		
Current assets:		
Cash and cash equivalents	\$ 62,359	\$ 135,033
Restricted cash	222,847	216,552
Accounts receivable, net of allowance of \$7,485 at June 30, 2024 and \$8,798 at December 31, 2023	189,863	243,811
Inventory, net	939,534	961,253
Contract assets	132,900	126,248
Prepaid expenses and other current assets	124,919	104,068
Total current assets	<u>1,672,422</u>	<u>1,786,965</u>
Restricted cash	733,700	817,559
Property, plant, and equipment, net	1,509,693	1,436,177
Right of use assets related to finance leases, net	54,735	57,281
Right of use assets related to operating leases, net	376,106	399,969
Equipment related to power purchase agreements and fuel delivered to customers, net	117,335	111,261
Contract assets	29,531	29,741
Intangible assets, net	178,338	188,886
Investments in non-consolidated entities and non-marketable equity securities	96,814	63,783
Other assets	11,179	11,116
Total assets	<u>\$ 4,779,853</u>	<u>\$ 4,902,738</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 253,715	\$ 257,828
Accrued expenses	112,612	200,544
Deferred revenue and other contract liabilities	174,828	204,139
Operating lease liabilities	66,405	63,691
Finance lease liabilities	10,159	9,441
Finance obligations	85,642	84,031
Current portion of long-term debt	3,030	2,716
Contingent consideration, loss accrual for service contracts, and other current liabilities	103,223	142,410
Total current liabilities	<u>809,614</u>	<u>964,800</u>
Deferred revenue and other contract liabilities	71,018	84,163
Operating lease liabilities	264,251	292,002
Finance lease liabilities	30,573	36,133
Finance obligations	245,011	284,363
Convertible senior notes, net	208,576	195,264
Long-term debt	2,400	1,209
Contingent consideration, loss accrual for service contracts, and other liabilities	159,830	146,679
Total liabilities	<u>1,791,273</u>	<u>2,004,613</u>
Stockholders' equity:		
Common stock, \$.01 par value per share; 1,500,000,000 shares authorized; Issued (including shares in treasury): 806,993,410 at June 30, 2024 and 625,305,025 at December 31, 2023	8,070	6,254
Additional paid-in capital	8,137,182	7,494,685
Accumulated other comprehensive loss	(1,949)	(6,802)
Accumulated deficit	(5,047,853)	(4,489,744)
Less common stock in treasury: 19,360,457 at June 30, 2024 and 19,169,366 at December 31, 2023	(106,870)	(106,268)
Total stockholders' equity	<u>2,988,580</u>	<u>2,898,125</u>
Total liabilities and stockholders' equity	<u>\$ 4,779,853</u>	<u>\$ 4,902,738</u>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(In thousands, except share and per share amounts)
(Unaudited)

	Three months ended		Six months ended	
	2024	2023	2024	2023
Net revenue:				
Sales of equipment, related infrastructure and other	\$ 76,788	\$ 216,286	\$ 145,083	\$ 398,380
Services performed on fuel cell systems and related infrastructure	13,034	8,701	26,057	17,798
Power purchase agreements	19,674	16,130	37,978	24,067
Fuel delivered to customers and related equipment	29,887	17,878	48,173	28,020
Other	3,967	1,187	6,323	2,203
Net revenue	<u>143,350</u>	<u>260,182</u>	<u>263,614</u>	<u>470,468</u>
Cost of revenue:				
Sales of equipment, related infrastructure and other	129,911	187,408	265,036	345,728
Services performed on fuel cell systems and related infrastructure	13,730	23,449	26,687	35,670
Provision for loss contracts related to service	16,484	7,331	32,229	14,220
Power purchase agreements	54,312	53,976	109,540	100,792
Fuel delivered to customers and related equipment	58,317	64,450	116,890	118,951
Other	1,851	1,711	3,562	2,646
Total cost of revenue	<u>274,605</u>	<u>338,325</u>	<u>553,944</u>	<u>618,007</u>
Gross loss	(131,255)	(78,143)	(290,330)	(147,539)
Operating expenses:				
Research and development	18,940	29,251	44,220	55,786
Selling, general and administrative	85,144	101,154	163,103	205,170
Restructuring	1,629	—	7,640	—
Impairment	3,937	9,986	4,221	11,069
Change in fair value of contingent consideration	3,768	15,308	(5,432)	24,077
Total operating expenses	<u>113,418</u>	<u>155,699</u>	<u>213,752</u>	<u>296,102</u>
Operating loss	(244,673)	(233,842)	(504,082)	(443,641)
Interest income	7,795	16,391	17,072	34,023
Interest expense	(9,511)	(11,265)	(20,836)	(21,915)
Other expense, net	(9,080)	(5,082)	(16,076)	(9,853)
Realized gain on investments, net	—	264	—	263
Change in fair value of equity securities	—	3,842	—	8,917
Loss on equity method investments	(7,240)	(7,623)	(20,353)	(12,940)
Loss on extinguishment of convertible senior notes	—	—	(14,047)	—
Loss before income taxes	\$ (262,709)	\$ (237,315)	\$ (558,322)	\$ (445,146)
Income tax benefit	376	917	213	2,187
Net loss	<u>\$ (262,333)</u>	<u>\$ (236,398)</u>	<u>\$ (558,109)</u>	<u>\$ (442,959)</u>
Net loss per share:				
Basic and diluted	<u>\$ (0.36)</u>	<u>\$ (0.40)</u>	<u>\$ (0.81)</u>	<u>\$ (0.75)</u>
Weighted average number of common stock outstanding	<u>736,848,684</u>	<u>598,053,390</u>	<u>688,900,904</u>	<u>593,653,720</u>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Comprehensive Loss
(In thousands)
(Unaudited)

	Three months ended		Six months ended	
	2024	2023	2024	2023
Net loss	\$ (262,333)	\$ (236,398)	\$ (558,109)	\$ (442,959)
Other comprehensive income:				
Foreign currency translation gain	7,129	3,073	4,853	4,732
Change in net unrealized gain on available-for-sale securities	—	2,197	—	7,508
Comprehensive loss, net of tax	<u>\$ (255,204)</u>	<u>\$ (231,128)</u>	<u>\$ (553,256)</u>	<u>\$ (430,719)</u>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity
(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Gain/(Loss)	Treasury Stock		Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			Shares	Amount		
December 31, 2023	625,305,025	\$ 6,254	\$ 7,494,685	\$ (6,802)	19,169,366	\$ (106,268)	\$ (4,489,744)	\$ 2,898,125
Net loss	—	—	—	—	—	—	(295,776)	(295,776)
Other comprehensive loss	—	—	—	(2,231)	—	—	—	(2,231)
Stock-based compensation	923,027	9	13,695	—	—	—	—	13,704
Public offerings, common stock, net of issuance costs	79,553,175	796	304,550	—	—	—	—	305,346
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	(176,678)	(2)	43	—	—	—	—	41
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	72,849	(278)	—	(278)
Provision for common stock warrants	—	—	10,236	—	—	—	—	10,236
March 31, 2024	705,604,549	\$ 7,057	\$ 7,823,209	\$ (9,033)	19,242,215	\$ (106,546)	\$ (4,785,520)	\$ 2,929,167
Net loss	—	—	—	—	—	—	(262,333)	(262,333)
Other comprehensive income	—	—	—	7,084	—	—	—	7,084
Stock-based compensation	1,252,258	13	26,296	—	—	—	—	26,309
Public offerings, common stock, net of issuance costs	96,812,695	968	265,806	—	—	—	—	266,774
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	698,280	6	20	—	—	—	—	26
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	118,242	(324)	—	(324)
Earnouts from acquisitions paid in stock	2,625,628	26	18,215	—	—	—	—	18,241
Provision for common stock warrants	—	—	3,636	—	—	—	—	3,636
June 30, 2024	806,993,410	\$ 8,070	\$ 8,137,182	\$ (1,949)	19,360,457	\$ (106,870)	\$ (5,047,853)	\$ 2,988,580
December 31, 2022	608,421,785	\$ 6,084	\$ 7,297,306	\$ (26,004)	18,076,127	\$ (96,261)	\$ (3,120,911)	\$ 4,060,214
Net loss	—	—	—	—	—	—	(206,561)	(206,561)
Other comprehensive income	—	—	—	6,970	—	—	—	6,970
Stock-based compensation	228,954	2	43,300	—	—	—	—	43,302
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	620,250	6	668	—	—	—	—	674
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	169,787	(2,590)	—	(2,590)
Exercise of warrants	2,680,637	28	(28)	—	—	—	—	—
Provision for common stock warrants	—	—	19,641	—	—	—	—	19,641
March 31, 2023	611,951,626	\$ 6,120	\$ 7,360,887	\$ (19,034)	18,245,914	\$ (98,851)	\$ (3,327,472)	\$ 3,921,650
Net loss	—	—	—	—	—	—	(236,398)	(236,398)
Other comprehensive income	—	—	—	5,270	—	—	—	5,270
Stock-based compensation	338,328	3	39,915	—	—	—	—	39,918
Stock option exercises and issuance of common stock upon grant/vesting of restricted stock and restricted stock unit awards	246,717	3	55	—	—	—	—	58
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock and restricted stock unit awards	—	—	—	—	39,349	(364)	—	(364)
Exercise of warrants	6,623,794	66	(66)	—	—	—	—	—
Provision for common stock warrants	—	—	951	—	—	—	—	951
Earnouts from acquisitions paid in stock	927,042	9	7,991	—	—	—	—	8,000
June 30, 2023	620,087,507	\$ 6,201	\$ 7,409,733	\$ (13,764)	18,285,263	\$ (99,215)	\$ (3,563,870)	\$ 3,739,085

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Six months ended June 30,	
	2024	2023
Operating activities		
Net loss	\$ (558,109)	\$ (442,959)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of long-lived assets	34,603	21,266
Amortization of intangible assets	9,434	9,755
Lower of cost or net realizable value inventory adjustment and provision for excess and obsolete inventory	53,359	11,760
Stock-based compensation	40,013	83,220
Loss on extinguishment of convertible senior notes	14,047	—
(Recoveries)/provision for losses on accounts receivable	(1,313)	896
Amortization of (premium)/discount of debt issuance costs on convertible senior notes and long-term debt	(718)	1,195
Provision for common stock warrants	10,327	14,302
Deferred income tax (benefit)/expense	(213)	1,512
Impairment	4,221	11,069
Loss on service contracts	7,292	856
Fair value adjustment to contingent consideration	(5,432)	24,077
Net realized loss on investments	—	(263)
Accretion of premium on available-for-sale securities	—	(5,949)
Lease origination costs	(2,467)	(5,567)
Change in fair value for equity securities	—	(8,917)
Loss on equity method investments	20,353	12,940
Changes in operating assets and liabilities that provide/(use) cash:		
Accounts receivable	55,261	(88,091)
Inventory	(11,925)	(269,707)
Contract assets	(2,897)	(23,807)
Prepaid expenses and other assets	(20,864)	9,178
Accounts payable, accrued expenses, and other liabilities	(15,818)	(720)
Payments of contingent consideration	(9,164)	(2,895)
Deferred revenue and other contract liabilities	(42,436)	21,838
Net cash used in operating activities	<u>(422,466)</u>	<u>(625,011)</u>
Investing activities		
Purchases of property, plant and equipment	(193,923)	(319,322)
Purchases of equipment related to power purchase agreements and equipment related to fuel delivered to customers	(11,022)	(19,309)
Proceeds from maturities of available-for-sale securities	—	908,749
Proceeds from sales of equity securities	—	76,263
Cash paid for non-consolidated entities and non-marketable equity securities	(63,713)	(40,894)
Net cash (used in)/provided by investing activities	<u>(268,658)</u>	<u>605,487</u>
Financing activities		
Payments of contingent consideration	(1,836)	(10,105)
Proceeds from public and private offerings, net of transaction costs	572,120	—
Payments of tax withholding on behalf of employees for net stock settlement of stock-based compensation	(602)	(2,954)
Proceeds from exercise of stock options	67	732
Principal payments on long-term debt	(685)	(5,407)
Proceeds from finance obligations	—	77,589
Principal repayments of finance obligations and finance leases	(42,313)	(34,211)
Net cash provided by financing activities	<u>526,751</u>	<u>25,644</u>
Effect of exchange rate changes on cash	14,135	(2,139)
Decrease in cash and cash equivalents	(72,674)	(111,212)
(Decrease)/increase in restricted cash	(77,564)	115,193
Cash, cash equivalents, and restricted cash beginning of period	1,169,144	1,549,344
Cash, cash equivalents, and restricted cash end of period	<u>\$ 1,018,906</u>	<u>\$ 1,553,325</u>
Supplemental disclosure of cash flow information		
Cash paid for interest, net of capitalized interest of \$5.2 million at June 30, 2024 and \$4.0 million at June 30, 2023	<u>\$ 22,595</u>	<u>\$ 20,101</u>
Summary of non-cash activity		
Recognition of right of use asset - finance leases	\$ 163	\$ 4,818
Recognition of right of use asset - operating leases	5,404	56,328
Net transfers between inventory and long-lived assets	19,349	705
Earnouts from acquisitions paid in common stock and warrants	18,241	8,000
Purchases of long lived asset from financing agreement	2,000	—
Accrued purchase of fixed assets, cash to be paid in subsequent period	84,339	109,490

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements.

1. Nature of Operations

Plug Power Inc. (the “Company”, “Plug”, “we” or “our”) is facilitating the paradigm shift to an increasingly electrified world by innovating cutting-edge hydrogen and fuel cell solutions. While we continue to develop commercially viable hydrogen and fuel cell product solutions, we have expanded our offerings to support a variety of commercial operations that can be powered with clean hydrogen. We provide electrolyzers that allow customers — such as refineries, producers of chemicals, steel, fertilizer and commercial refueling stations — to generate hydrogen on-site. We are focusing our efforts on (a) industrial mobility applications, including electric forklifts and electric industrial vehicles, at multi shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility, and environmental benefits; (b) production of hydrogen; and (c) stationary power systems that will support critical operations, such as data centers, microgrids, and generation facilities, in either a backup power or continuous power role, and replace batteries, diesel generators or the grid for telecommunication logistics, transportation, and utility customers. Plug expects to support these products and customers with an ecosystem of vertically integrated products that produce, transport, store and handle, dispense, and use hydrogen for mobility and power applications.

Liquidity and Capital Resources

The Company’s working capital was \$862.8 million as of June 30, 2024, which included unrestricted cash and cash equivalents of \$62.4 million and restricted cash of \$956.5 million. On January 17, 2024, the Company entered into the At Market Issuance Sales Agreement (the “Original ATM Agreement”) with B. Riley Securities, Inc. (“B. Riley”), pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company’s common stock, having an aggregate offering price of up to \$1.0 billion. As of February 23, 2024, the Company had \$697.9 million remaining authorized for issuance under the Original ATM Agreement. On February 23, 2024, the Company and B. Riley entered into Amendment No. 1 to the Original ATM Agreement (the “Amendment” and, together with the Original ATM Agreement, the “ATM Agreement”) to increase the aggregate offering price of shares of the Company’s common stock available for future issuance under the Original ATM Agreement to \$1.0 billion. Under the ATM Agreement, for a period of 18 months, the Company has the right at its sole discretion to direct B. Riley to act on a principal basis and purchase directly from the Company up to \$11.0 million of shares of its common stock on any trading day (the “Maximum Commitment Advance Purchase Amount”) and up to \$55.0 million of shares in any calendar week (the “Maximum Commitment Advance Purchase Amount Cap”). On and after June 1, 2024, so long as the Company’s market capitalization is no less than \$1.0 billion, the Maximum Commitment Advance Purchase Amount will remain \$11.0 million and the Maximum Commitment Advance Purchase Amount Cap will remain \$55.0 million. If the Company’s market capitalization is less than \$1.0 billion on and after June 1, 2024, the Maximum Commitment Advance Purchase Amount will be decreased to \$10.0 million and the Maximum Commitment Advance Purchase Amount Cap will be decreased to \$30.0 million. Since January 17, 2024, the Company has sold 189,411,442 shares of common stock for gross proceeds of \$611.5 million. As of the date of filing of this Quarterly Report on Form 10-Q, the Company has a remaining \$690.6 million available under the ATM Agreement.

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$2.54 per share for net proceeds of \$191.0 million after deduction of the underwriting discount and related offering expenses in an underwritten public offering with Morgan Stanley & Co. LLC. The Company granted the underwriter a 30-day option to purchase up to an additional 11,811,023 shares of common stock at the public offering price, less the underwriting discount.

The Company believes that its working capital and cash position, together with its right to direct B. Riley to purchase shares directly from the Company under the ATM Agreement and its public offering of common stock completed in July 2024, will be sufficient to fund its on-going operations for a period of at least 12 months subsequent to the issuance of the accompanying unaudited interim condensed consolidated financial statements.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The unaudited interim condensed consolidated financial statements include the financial statements of the Company and its wholly-owned subsidiaries. Intercompany balances and transactions have been eliminated in consolidation. In addition, we include our share of the results of our joint ventures with Renault SAS (“Renault”) named HyVia SAS, a French société par actions simplifiée (“HyVia”), AccionaPlug S.L. (“AccionaPlug”), and SK Plug Hyverse Co., Ltd. (“SK Plug Hyverse”), and our investment in Clean H2 Infra Fund, using the equity method based on our economic ownership interest and our ability to exercise significant influence over the operating and financial decisions of HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund.

Interim Financial Statements

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). In the opinion of management, all adjustments, which consist solely of normal recurring adjustments, necessary to present fairly, in accordance with U.S. generally accepted accounting principles (“GAAP”), the financial position, results of operations and cash flows for all periods presented, have been made. The results of operations for the interim periods presented are not necessarily indicative of the results that may be expected for the full year.

Certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted. These unaudited interim condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the “2023 Form 10-K”).

The information presented in the accompanying unaudited interim condensed consolidated balance sheets as of December 31, 2023 has been derived from the Company’s 2023 audited consolidated financial statements.

The unaudited interim condensed consolidated financial statements contained herein should be read in conjunction with our 2023 Form 10-K.

Clean Hydrogen Production Tax Credit

Beginning in the second quarter of 2024, the Company has determined it qualifies for the clean hydrogen production tax credit (“PTC”) under Section 45V as part of the Inflation Reduction Act of 2022 (“IRA”) resulting from operation of the Company’s hydrogen production plant located in Georgia. As a result, the Company recorded approximately \$1.3 million to the other assets financial statement line item of the unaudited interim condensed consolidated balance sheet and a reduction to the fuel delivered to customers and related equipment cost of revenue financial statement line item of the unaudited interim condensed consolidated statement of operations.

Recent Accounting Pronouncements

Recently Adopted Accounting Guidance

There have been no significant changes in our reported financial position or results of operations and cash flows resulting from the adoption of new accounting pronouncements.

Recent Accounting Guidance Not Yet Effective

Other than the standards mentioned in our 2023 Form 10-K, all issued but not yet effective accounting and reporting standards as of June 30, 2024 are either not applicable to the Company or are not expected to have a material impact on the Company.

3. Extended Maintenance Contracts

On a quarterly basis, we evaluate any potential losses related to our extended maintenance contracts for sales of equipment, related infrastructure and other that have been sold. The following table shows the roll forward of balances in the accrual for loss contracts, including changes due to the provision for loss accrual, releases to service cost of sales, increase to loss accrual related to customer warrants, and foreign currency translation adjustment (in thousands):

	Six months ended June 30, 2024	Year ended December 31, 2023
Beginning balance	\$ 137,853	\$ 81,066
Provision for loss accrual	32,135	85,375
Releases to service cost of sales	(24,937)	(29,713)
Increase to loss accrual related to customer warrants	94	971
Foreign currency translation adjustment	(149)	154
Ending balance	\$ 144,996	\$ 137,853

The Company increased its loss accrual to \$145.0 million for the six months ended June 30, 2024 primarily due to continued cost increases of GenDrive labor, parts and related overhead coupled with new GenDrive contracts entered into requiring provisions to be set up. As a result, the Company increased its estimated projected costs.

4. Earnings Per Share

Basic earnings per common stock are computed by dividing net loss by the weighted average number of common stock outstanding during the reporting period. Since the Company is in a net loss position, all common stock equivalents would be considered anti-dilutive and are therefore not included in the determination of diluted earnings per share. Accordingly, basic and diluted loss per share are the same.

The potentially dilutive securities are summarized as follows:

	As of June 30,	
	2024	2023
Stock options outstanding (1)	42,380,705	33,821,392
Restricted stock and restricted stock units outstanding (2)	6,282,815	5,529,831
Common stock warrants (3)	82,022,634	78,561,263
Convertible Senior Notes (4)	44,661,605	39,170,766
Number of dilutive potential shares of common stock	175,347,759	157,083,252

- (1) During the three months ended June 30, 2024 and 2023, the Company granted options for 7,107,625 and 6,782,043 shares of common stock, respectively. During the six months ended June 30, 2024 and 2023, the Company granted options for 7,420,625 and 6,876,593 shares of common stock, respectively.
- (2) During the three months ended June 30, 2024 and 2023, the Company granted 1,037,057 and 294,143 shares of restricted stock and restricted stock units, respectively. During the six months ended June 30, 2024 and 2023, the Company granted 1,054,057 and 388,693 shares of restricted stock and restricted stock units, respectively.

[Table of Contents](#)

- (3) In May 2024, the Company issued warrants to purchase the Company's shares of common stock and the Company filed a prospectus supplement registering for resale up to 3,461,371 shares of the Company's common stock issuable upon exercise of the warrants that were issued in connection with an earn-out settlement agreement with Giner ELX, Inc. ("Giner") as described in Note 15, "Fair Value Measurements". The warrants have not been exercised as of June 30, 2024.

In August 2022, the Company issued a warrant to acquire up to 16,000,000 shares of the Company's common stock as part of a transaction agreement with Amazon.com, Inc. ("Amazon"), subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements". The warrant had not been exercised as of June 30, 2024 and 2023, respectively.

In April 2017, the Company issued a warrant to acquire up to 55,286,696 shares of the Company's common stock as part of a transaction agreement with Amazon, subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements". The warrant had been exercised with respect to 34,917,912 shares of the Company's common stock as of June 30, 2024 and 2023.

In July 2017, the Company issued a warrant to acquire up to 55,286,696 shares of the Company's common stock as part of a transaction agreement with Walmart, Inc. ("Walmart"), subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements". The warrant had been exercised with respect to 13,094,217 shares of the Company's common stock as of June 30, 2024 and 2023.

- (4) In March 2024, the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the 7.00% Convertible Senior Notes due 2026 (the "7.00% Convertible Senior Notes") as described in Note 10, "Convertible Senior Notes". There were no conversions of the 7.00% Convertible Senior Notes during the three and six months ended June 30, 2024 and 2023.

In May 2020, the Company issued \$212.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes due 2025 (the "3.75% Convertible Senior Notes") as described in Note 10, "Convertible Senior Notes". There were no conversions of the 3.75% Convertible Senior Notes during the three and six months ended June 30, 2024 and 2023.

5. Inventory

Inventory as of June 30, 2024 and December 31, 2023 consisted of the following (in thousands):

	June 30, 2024		December 31, 2023
Raw materials and supplies - production locations	\$ 536,835	\$	564,818
Raw materials and supplies - customer locations	29,775		20,751
Work-in-process	144,544		149,574
Finished goods	228,380		226,110
Inventory	<u>\$ 939,534</u>	<u>\$</u>	<u>961,253</u>

Inventory is comprised of raw materials, work-in-process, and finished goods. The Company had inventory reserves made up of excess and obsolete items and related lower of cost or net realizable value adjustments of \$112.9 million and \$85.2 million as of June 30, 2024 and December 31, 2023, respectively.

6. Property, Plant and Equipment

Property, plant and equipment as of June 30, 2024 and December 31, 2023 consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Land	\$ 5,706	\$ 6,049
Construction in progress	891,606	1,109,896
Hydrogen production plants	364,703	77,107
Building and leasehold improvements	104,650	95,229
Software, machinery, and equipment	252,011	229,352
Property, plant and equipment	1,618,676	1,517,633
Less: accumulated depreciation	(108,983)	(81,456)
Property, plant and equipment, net	<u>\$ 1,509,693</u>	<u>\$ 1,436,177</u>

Construction in progress is primarily comprised of construction of three hydrogen production plants. Completed assets are transferred to their respective asset classes, and depreciation begins when an asset is ready for its intended use. Interest on outstanding debt is capitalized during periods of capital asset construction and amortized over the useful lives of the related assets. During the three months ended June 30, 2024 and 2023, the Company capitalized \$3.1 million and \$2.0 million of interest, respectively. During the six months ended June 30, 2024 and 2023, the Company capitalized \$5.2 million and \$4.0 million of interest, respectively.

Depreciation expense related to property, plant and equipment was \$13.1 million and \$7.3 million for the three months ended June 30, 2024 and 2023, respectively. Depreciation expense related to property, plant and equipment was \$24.7 million and \$12.8 million for the six months ended June 30, 2024 and 2023, respectively.

7. Intangible Assets

The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of June 30, 2024 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	14 years	\$ 102,822	\$ (23,818)	\$ 79,004
Dry stack electrolyzer technology	10 years	29,000	(6,767)	22,233
Customer relationships, trade name and other	13 years	102,682	(25,581)	77,101
		<u>\$ 234,504</u>	<u>\$ (56,166)</u>	<u>\$ 178,338</u>

The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of December 31, 2023 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	14 years	\$ 103,060	\$ (20,204)	\$ 82,856
Dry stack electrolyzer technology	10 years	29,000	(5,317)	23,683
Customer relationships, trade name and other	13 years	103,981	(21,634)	82,347
		<u>\$ 236,041</u>	<u>\$ (47,155)</u>	<u>\$ 188,886</u>

The change in the gross carrying amount of the acquired technology and customer relationships, trade name and other from December 31, 2023 to June 30, 2024 was due to foreign currency translation.

[Table of Contents](#)

Amortization expense for acquired identifiable intangible assets for the three months ended June 30, 2024 and 2023 was \$4.6 million and \$4.8 million, respectively. Amortization expense for acquired identifiable intangible assets for the six months ended June 30, 2024 and 2023 was \$9.4 million and \$9.8 million, respectively.

The estimated amortization expense for subsequent years is as follows (in thousands):

Remainder of 2024	\$	9,380
2025		18,036
2026		16,462
2027		16,455
2028		16,046
2029 and thereafter		101,959
Total	\$	<u>178,338</u>

8. Accrued Expenses

Accrued expenses as of June 30, 2024 and December 31, 2023 consisted of (in thousands):

	June 30, 2024	December 31, 2023
Accrued payroll and compensation related costs	\$ 18,267	\$ 32,584
Accrual for capital expenditures	16,684	83,781
Accrued accounts payable	55,203	64,767
Accrued sales and other taxes	19,797	17,207
Accrued interest	991	562
Accrued other	1,670	1,643
Total	\$ <u>112,612</u>	\$ <u>200,544</u>

9. Long-Term Debt

During the second quarter of 2024, the Company began repaying principal and interest on a \$2.0 million allowance for tenant work related to its manufacturing facility in Slingerlands, NY. In accordance with ASC 842, *Leases* ("ASC 842"), the allowance is treated as a freestanding financial instrument separate from the facility lease and is accounted for as long-term debt. Plug is required to pay \$249 thousand per year during the term which began coinciding with the facility lease commencement date on January 1, 2023. The terms of the allowance state that interest will accrue at 4.5% per annum over a 10 year period. The debt is scheduled to mature in 2032. During the three months ended June 30, 2024 and 2023 the Company repaid \$42 thousand and \$40 thousand of principal related to this outstanding debt. During the six months ended June 30, 2024 and 2023 the Company repaid \$82 thousand and \$80 thousand of principal related to this outstanding debt. The outstanding principal and carrying value of the debt was \$1.8 million as of June 30, 2024.

In June 2020, the Company acquired debt as part of its acquisition of United Hydrogen Group Inc. During the three months ended June 30, 2024 and 2023, the Company repaid \$0.3 million and \$5.1 million of principal related to this outstanding debt. During the six months ended June 30, 2024 and 2023, the Company repaid \$0.6 million and \$5.4 million of principal related to this outstanding debt. The outstanding carrying value of the debt was \$3.7 million as of June 30, 2024. The remaining outstanding principal on the debt was \$4.9 million and the unamortized debt discount was \$1.2 million, bearing varying interest rates ranging from 7.3% to 7.6%. The debt is scheduled to mature in 2026. As of June 30, 2024, the principal balance is due at each of the following dates as follows (in thousands):

December 31, 2024	2,757
December 31, 2025	1,200
December 31, 2026	900
Total outstanding principal	\$ <u>4,857</u>

10. Convertible Senior Notes

7.00% Convertible Senior Notes

On March 20, 2024, the Company entered into separate, privately negotiated exchange agreements with certain holders of the Company's outstanding 3.75% Convertible Senior Notes pursuant to which the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes, and accrued and unpaid interest of \$1.6 million on such notes to, but excluding, March 20, 2024, for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes due 2026, in each case, pursuant to the exemption from registration provided by Section 4(a)(2) under the Securities Act of 1933, as amended (the "Securities Act"). Following the exchange, approximately \$58.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged.

This transaction was accounted for as an extinguishment of debt. As a result, the Company recorded a loss on extinguishment of debt of \$14.0 million in the unaudited interim condensed consolidated statement of operations during the first quarter of 2024. Loss on extinguishment of debt arises from the difference between the net carrying amount of the Company's debt and the fair value of the assets transferred to extinguish the debt.

The 7.00% Convertible Senior Notes are the Company's senior, unsecured obligations and are governed by the terms of an Indenture (the "Indenture"), dated as of March 20, 2024, entered into between the Company and Wilmington Trust, National Association, as trustee. The 7.00% Convertible Senior Notes bear cash interest at the rate of 7.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2024, to holders of record at the close of business on the preceding May 15 and November 15, respectively. The 7.00% Convertible Senior Notes mature on June 1, 2026, unless earlier converted or redeemed or repurchased by the Company.

The conversion rate for the 7.00% Convertible Senior Notes is initially 235.4049 shares of the Company's common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, which is equivalent to an initial conversion price of approximately \$4.25 per share of common stock, which represents a premium of approximately 20% over the last reported sale price of Plug's common stock on the Nasdaq Capital Market on March 12, 2024. The conversion rate and conversion price are subject to customary adjustments upon the occurrence of certain events. Prior to the close of business on the business day immediately preceding December 1, 2025, the 7.00% Convertible Senior Notes will be convertible at the option of the holders of the 7.00% Convertible Senior Notes only upon the satisfaction of specified conditions and during certain periods. On or after December 1, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity date, the 7.00% Convertible Senior Notes will be convertible at the option of the holders of the 7.00% Convertible Senior Notes at any time regardless of these conditions. Conversions of the 7.00% Convertible Senior Notes will be settled in cash, shares of the Company's common stock, or a combination thereof, at the Company's election.

Subject to certain exceptions and subject to certain conditions, holders of the 7.00% Convertible Senior Notes may require the Company to repurchase their 7.00% Convertible Senior Notes upon the occurrence of a "Fundamental Change" (as defined in the Indenture) prior to maturity for cash at a repurchase price equal to 100% of the principal amount of the 7.00% Convertible Senior Notes to be repurchased plus accrued and unpaid interest, if any, to, but excluding, the repurchase date.

The 7.00% Convertible Senior Notes will be redeemable, in whole or in part, at the Company's option at any time on or after June 5, 2025, at a cash redemption price equal to the principal amount of the 7.00% Convertible Senior Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the then-applicable conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the three trading days immediately preceding the date the Company sends the related redemption notice, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company sends such redemption notice.

[Table of Contents](#)

In certain circumstances, conversions of 7.00% Convertible Senior Notes in connection with “Make-Whole Fundamental Changes” (as defined in the Indenture) or conversions of 7.00% Convertible Senior Notes called for redemption may result in an increase to the conversion rate, provided that the conversion rate will not exceed 282.4859 shares of the Company’s common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, subject to adjustment. In such circumstance, a maximum of 39,659,890 shares of common stock, subject to adjustment, may be issued upon conversion of the 7.00% Convertible Senior Notes. There were no conversions of the 7.00% Convertible Senior Notes during the three and six months ended June 30, 2024.

The 7.00% Convertible Senior Notes consisted of the following (in thousands):

	June 30, 2024
Principal amounts:	
Principal	\$ 140,396
Unamortized debt premium, net of offering costs (1)	10,126
Net carrying amount	<u>\$ 150,522</u>

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 7.00% Convertible Senior Notes for the three and six months ended June 30, 2024 (in thousands, except for the effective interest rate):

	Three months ended June 30, 2024		Six months ended June 30, 2024	
Interest expense	\$	2,450	\$	2,746
Amortization of premium		(1,314)		(1,473)
Total	\$	1,136	\$	1,273
Effective interest rate		3.0%		3.0%

The estimated fair value of the 7.00% Convertible Senior Notes as of June 30, 2024 was approximately \$126.3 million. The fair value estimation was primarily based on a quoted price in an active market.

3.75% Convertible Senior Notes

On May 18, 2020, the Company issued \$200.0 million in aggregate principal amount of 3.75% Convertible Senior Notes due June 1, 2025 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act. On May 29, 2020, the Company issued an additional \$12.5 million in aggregate principal amount of 3.75% Convertible Senior Notes. On March 12, 2024, the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the Company’s new 7.00% Convertible Senior Notes due 2026. Following the exchange, approximately \$58.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged. There were no conversions of the 3.75% Convertible Senior Notes during the three and six months ended June 30, 2024 and 2023.

[Table of Contents](#)

The 3.75% Convertible Senior Notes consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Principal amounts:		
Principal	\$ 58,462	\$ 197,278
Unamortized debt issuance costs (1)	(408)	(2,014)
Net carrying amount	\$ 58,054	\$ 195,264

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 3.75% Convertible Senior Notes for the three and six months ended June 30, 2024 and 2023 (in thousands, except for the effective interest rate):

	Three months ended		Six months ended	
	June 30, 2024	June 30, 2023	June 30, 2024	June 30, 2023
Interest expense	\$ 548	\$ 1,849	\$ 2,238	\$ 3,698
Amortization of debt issuance costs	108	334	424	665
Total	\$ 656	\$ 2,183	\$ 2,662	\$ 4,363
Effective interest rate	4.5%	4.5%	4.5%	4.5%

The estimated fair value of the 3.75% Convertible Senior Notes as of June 30, 2024 was approximately \$54.5 million. The fair value estimation was primarily based on a quoted price in an active market.

Capped Call

In conjunction with the pricing of the 3.75% Convertible Senior Notes, the Company entered into privately negotiated capped call transactions (the “3.75% Notes Capped Call”) with certain counterparties at a price of \$16.2 million. The 3.75% Notes Capped Call covers, subject to anti-dilution adjustments, the aggregate number of shares of the Company’s common stock that underlie the initial 3.75% Convertible Senior Notes and is generally expected to reduce potential dilution to the Company’s common stock upon any conversion of the 3.75% Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the 3.75% Notes Capped Call is initially \$6.7560 per share, which represents a premium of approximately 60% over the last then-reported sale price of the Company’s common stock of \$4.11 per share on the date of the transaction and is subject to certain adjustments under the terms of the 3.75% Notes Capped Call. The 3.75% Notes Capped Call becomes exercisable if the conversion option is exercised.

The net cost incurred in connection with the 3.75% Notes Capped Call was recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets. The book value of the 3.75% Notes Capped Call is not remeasured.

5.5% Convertible Senior Notes and Common Stock Forward

In March 2018, the Company issued \$100.0 million in aggregate principal amount of the 5.5% Convertible Senior Notes due on March 15, 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act, which have been fully repaid. In connection with the issuance of the 5.5% Convertible Senior Notes, the Company entered into a forward stock purchase transaction (the “Common Stock Forward”), pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. On May 18, 2020, the Company amended and extended the maturity of the Common Stock Forward to June 1, 2025. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to

customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$27.5 million was recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets. The related shares were accounted for as a repurchase of common stock. The book value of the Common Stock Forward is not remeasured.

There were no shares of common stock that settled in connection with the Common Stock Forward during the three and six months ended June 30, 2024 and 2023.

11. Stockholders' Equity

At Market Issuance Sales Agreement

On January 17, 2024, the Company entered into an At Market Issuance Sales Agreement with B. Riley, pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company's common stock, having an aggregate offering price of up to \$1.0 billion. As of February 23, 2024, the Company had \$697.9 million remaining authorized for issuance under the ATM Agreement. On February 23, 2024, the Company amended the ATM Agreement to increase the amount of shares of the Company's common stock available for sale under the ATM Agreement to \$1.0 billion. During the three months ended June 30, 2024, the Company sold 96,812,695 shares of common stock at a weighted-average sales price of \$2.80 per share for gross proceeds of \$271.5 million with related issuance costs of \$4.8 million. During the six months ended June 30, 2024, the Company sold 176,365,870 shares of common stock at a weighted-average sales price of \$3.29 per share for gross proceeds of \$580.8 million with related issuance costs of \$8.7 million.

Public Offering of Common Stock

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$2.54 per share for net proceeds of \$191.0 million after deduction of the underwriting discount and related offering expenses in an underwritten public offering with Morgan Stanley & Co. LLC. The Company granted the underwriter a 30-day option to purchase up to an additional 11,811,023 shares of common stock at the public offering price, less the underwriting discount.

Accumulated Other Comprehensive Loss

Accumulated other comprehensive loss is comprised of unrealized gains and losses on available-for-sale securities and foreign currency translation gains and losses. There were no reclassifications from accumulated other comprehensive loss for the three and six months ended June 30, 2024 and 2023, respectively.

Net current-period other comprehensive income for the three months ended June 30, 2024 increased due to foreign currency translation gains of \$7.1 million. Net current-period other comprehensive income for the three months ended June 30, 2023 increased due to unrealized gains on available-for-sale securities of \$2.2 million and foreign currency translation gains of \$3.1 million.

Net current-period other comprehensive income for the six months ended June 30, 2024 increased due to foreign currency translation gains of \$4.9 million. Net current-period other comprehensive income for the six months ended June 30, 2023 increased due to unrealized gains on available-for-securities of \$7.5 million and foreign currency translation gains of \$4.7 million.

12. Warrant Transaction Agreements

Amazon Transaction Agreement in 2022

On August 24, 2022, the Company and Amazon entered into a Transaction Agreement (the “2022 Amazon Transaction Agreement”), under which the Company concurrently issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the “2022 Amazon Warrant”) to acquire up to 16,000,000 shares (the “2022 Amazon Warrant Shares”) of the Company’s common stock, subject to certain vesting events described below. The Company and Amazon entered into the 2022 Amazon Transaction Agreement in connection with a concurrent commercial arrangement under which Amazon agreed to purchase hydrogen fuel from the Company through August 24, 2029.

1,000,000 of the 2022 Amazon Warrant Shares vested immediately upon issuance of the 2022 Amazon Warrant. 15,000,000 of the 2022 Amazon Warrant Shares will vest in multiple tranches over the 7-year term of the 2022 Amazon Warrant based on payments made to the Company directly by Amazon or its affiliates, or indirectly through third parties, with 15,000,000 of the 2022 Amazon Warrant Shares fully vesting if Amazon-related payments of \$2.1 billion are made in the aggregate. The exercise price for the first 9,000,000 2022 Amazon Warrant Shares is \$22.9841 per share and the fair value on the grant date was \$20.36. The exercise price for the remaining 7,000,000 2022 Amazon Warrant Shares will be an amount per share equal to 90% of the 30-day volume weighted average share price of the Company’s common stock as of the final vesting event that results in full vesting of the first 9,000,000 2022 Amazon Warrant Shares. The 2022 Amazon Warrant is exercisable through August 24, 2029.

Upon the consummation of certain change of control transactions (as defined in the 2022 Amazon Warrant) prior to the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, the 2022 Amazon Warrant will automatically vest and become exercisable with respect to an additional number of 2022 Amazon Warrant Shares such that 60% of the aggregate 2022 Amazon Warrant Shares shall have vested. If a change of control transaction is consummated after the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, then no acceleration of vesting will occur with respect to any of the unvested 2022 Amazon Warrant Shares as a result of the transaction. The exercise price and the 2022 Amazon Warrant Shares issuable upon exercise of the 2022 Amazon Warrant are subject to customary antidilution adjustments.

On August 24, 2022, 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 1 vested. The warrant fair value associated with the vested shares of tranche 1 of \$20.4 million was capitalized to contract assets based on the grant date fair value and is subsequently amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement. As of June 30, 2024 the balance of the contract asset related to tranche 1 was \$19.0 million which is recorded in contract assets in the Company’s unaudited interim condensed consolidated balance sheet. During the second quarter of 2023, all 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 2 vested. The warrant fair value associated with the vested shares of tranche 2 was \$20.4 million and was determined on the grant date of August 24, 2022. As of June 30, 2024 the balance of the contract asset related to tranche 2 was \$19.0 million. Tranche 3 will vest over the next \$1.0 billion of collections from Amazon and its affiliates. The grant date fair value of tranche 3 will also be amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement. As of June 30, 2024 the balance of the contract asset related to tranche 3 was \$1.5 million. Because the exercise price has yet to be determined, the fair value of tranche 4 will be remeasured at each reporting period end and amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement.

As of June 30, 2024 and December 31, 2023, 2,500,000 and 2,000,000 of the 2022 Amazon Warrant Shares had vested, respectively, and the 2022 Amazon Warrant had not been exercised. During the three and six months ended June 30, 2024 and 2023, there were no exercises with respect to the 2022 Amazon Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the three months ended June 30, 2024 and 2023 was \$1.7 million and \$1.5 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the six months ended June 30, 2024 and 2023 was \$2.4 million and \$2.6 million, respectively.

The assumptions used to calculate the valuations of the 2022 Amazon Warrant as of August 24, 2022 and June 30, 2024 are as follows:

	Tranches 1-3 August 24, 2022	Tranche 4 June 30, 2024
Risk-free interest rate	3.15%	4.24%
Volatility	75.00%	90.00%
Expected average term (years)	7.00	1.15
Exercise price	\$22.98	\$2.10
Stock price	\$20.36	\$2.33

Amazon Transaction Agreement in 2017

On April 4, 2017, the Company and Amazon entered into a Transaction Agreement (the “2017 Amazon Transaction Agreement”), pursuant to which the Company agreed to issue to Amazon.com NV Investment Holdings LLC, a warrant (the “2017 Amazon Warrant”) to acquire up to 55,286,696 shares (the “2017 Amazon Warrant Shares”), subject to certain vesting events. The Company and Amazon entered into the 2017 Amazon Transaction Agreement in connection with existing commercial agreements between the Company and Amazon with respect to the deployment of the Company’s GenKey fuel cell technology at Amazon distribution centers. The vesting of the 2017 Amazon Warrant Shares was conditioned upon payments made by Amazon or its affiliates (directly or indirectly through third parties) pursuant to existing commercial agreements. On December 31, 2020, the Company waived the remaining vesting conditions under the 2017 Amazon Warrant, which resulted in the immediate vesting of all of the third tranche of the 2017 Amazon Warrant Shares.

As of June 30, 2024 and 2023, all 55,286,696 of the 2017 Amazon Warrant Shares had vested and the 2017 Amazon Warrant was exercised with respect to 34,917,912 shares of the Company’s common stock. During the three and six months ended June 30, 2024 and 2023, there were no exercises with respect to the 2017 Amazon Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2017 Amazon Warrant during the three months ended June 30, 2024 and 2023 was \$0.1 million and \$0.1 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2017 Amazon Warrant during the six months ended June 30, 2024 and 2023 was \$0.2 million and \$0.2 million, respectively.

Walmart Transaction Agreement

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the “Walmart Transaction Agreement”), pursuant to which the Company agreed to issue to Walmart a warrant (the “Walmart Warrant”) to acquire up to 55,286,696 shares of the Company’s common stock, subject to certain vesting events (the “Walmart Warrant Shares”). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company’s GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company’s fuel cell technology. The vesting of the warrant shares was conditioned upon payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The exercise price for the first and second tranches of Walmart Warrant Shares was \$2.1231 per share. After Walmart has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Walmart Warrant Shares will vest in eight installments of 2,546,098 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of the Walmart Warrant Shares is \$6.28 per share, which was determined pursuant to the terms of the Walmart Warrant as an amount equal to 90% of the 30-day volume weighted average share price of the Company’s common stock as of October 30, 2023, the final vesting date of the second tranche of the Walmart Warrant Shares. The Walmart Warrant is exercisable through July 20, 2027. The Walmart Warrant provides for net share settlement that, if elected by the holder, will reduce the number of

shares issued upon exercise to reflect net settlement of the exercise price. The Walmart Warrant provides for certain adjustments that may be made to the exercise price and the number of shares of common stock issuable upon exercise due to customary anti-dilution provisions based on future events. The Walmart Warrant is classified as an equity instrument. As of June 30, 2024, the balance of the contract asset related to the Walmart Warrant was \$5.4 million.

As of June 30, 2024 and December 31, 2023, 37,464,010 and 34,917,912 of the Walmart Warrant Shares had vested, respectively, and the Walmart Warrant was exercised with respect to 13,094,217 shares of the Company's common stock. During the three and six months ended June 30, 2024 and 2023, there were no exercises with respect to the Walmart Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended June 30, 2024 was \$4.0 million compared to a negative provision for common stock warrants recorded as an addition to revenue of \$1.5 million for the three months ended June 30, 2023. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the six months ended June 30, 2024 and 2023 was \$7.7 million and \$11.5 million, respectively.

13. Revenue

Disaggregation of revenue

The following table provides information about disaggregation of revenue (in thousands):

Major products/services lines	Three months ended		Six months ended	
	June 30,		June 30,	
	2024	2023	2024	2023
Sales of fuel cell systems	\$ 13,148	\$ 72,181	\$ 32,149	\$ 101,033
Sales of hydrogen infrastructure	13,235	58,647	25,531	107,515
Sales of electrolyzers	15,029	6,966	16,381	46,998
Sales of engineered equipment	4,406	8,819	8,622	16,572
Services performed on fuel cell systems and related infrastructure	13,034	8,701	26,057	17,798
Power purchase agreements	19,674	16,130	37,978	24,067
Fuel delivered to customers and related equipment	29,887	17,878	48,173	28,020
Sales of cryogenic equipment and liquefiers	30,970	69,673	62,400	126,262
Other	3,967	1,187	6,323	2,203
Net revenue	\$ 143,350	\$ 260,182	\$ 263,614	\$ 470,468

Contract balances

The following table provides information about receivables, contract assets and deferred revenue and contract liabilities from contracts with customers (in thousands):

	June 30,	December 31,
	2024	2023
Accounts receivable	\$ 189,863	\$ 243,811
Contract assets	162,431	155,989
Deferred revenue and contract liabilities	245,846	288,302

Contract assets primarily relate to contracts for which revenue is recognized on a straight-line basis; however, billings escalate over the life of a contract. Contract assets also include amounts recognized as revenue in advance of billings to customers, which are dependent upon the satisfaction of another performance obligation. These amounts are included in contract assets on the accompanying unaudited interim condensed consolidated balance sheets.

The deferred revenue and contract liabilities relate to the advance consideration received from customers for services that will be recognized over time (primarily fuel cell and related infrastructure services and electrolyzer systems)

[Table of Contents](#)

and solutions). Deferred revenue and contract liabilities also include advance consideration received from customers prior to delivery of products. These amounts are included within deferred revenue and other contract liabilities on the unaudited interim condensed consolidated balance sheets.

Significant changes in the contract assets and the deferred revenue and contract liabilities balances during the period are as follows (in thousands):

Contract assets	Six months ended June 30, 2024	Year ended December 31, 2023
Transferred to receivables from contract assets recognized at the beginning of the period	\$ (12,959)	\$ (94,860)
Change in contract assets related to warrants	3,766	14,260
Impairment	—	(2,375)
Revenue recognized and not billed as of the end of the period	15,635	134,677
Net change in contract assets	<u>\$ 6,442</u>	<u>\$ 51,702</u>

Deferred revenue and contract liabilities	Six months ended June 30, 2024	Year ended December 31, 2023
Increases due to customer billings, net of amounts recognized as revenue during the period	\$ 21,195	\$ 151,965
Change in contract liabilities related to warrants	219	440
Revenue recognized that was included in the contract liability balance as of the beginning of the period	(63,870)	(94,001)
Net change in deferred revenue and contract liabilities	<u>\$ (42,456)</u>	<u>\$ 58,404</u>

Estimated future revenue

The following table includes estimated revenue expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period, including provision for common stock warrants (in thousands):

	June 30, 2024	Expected recognition period (years)
Sales of fuel cell systems	\$ 39,989	1 - 2
Sales of hydrogen installations and other infrastructure	30,317	1
Sales of electrolyzers	320,839	1 - 2
Sales of engineered equipment	11,186	1
Services performed on fuel cell systems and related infrastructure	134,469	5 - 10
Power purchase agreements	401,874	5 - 10
Fuel delivered to customers and related equipment	91,984	5 - 10
Sales of cryogenic equipment and other	71,944	1
Total estimated future revenue	<u>\$ 1,102,602</u>	

14. Income Taxes

The Company recorded \$0.4 million of income tax benefit and \$0.9 million of income tax benefit for the three months ended June 30, 2024 and 2023, respectively. The Company recorded \$0.2 million of income tax benefit and \$2.2 million of income tax benefit for the six months ended June 30, 2024 and 2023, respectively. The income tax benefit for the six months ended June 30, 2024 was due to an incremental change to the valuation allowance recorded in foreign jurisdictions. The Company has not changed its overall conclusion with respect to the need for a valuation allowance

against its domestic net deferred tax assets, which remain fully reserved, and its valuation allowances recorded in foreign jurisdictions.

The domestic net deferred tax asset generated from the Company’s net operating loss has been offset by a full valuation allowance because it is more likely than not that the tax benefits of the net operating loss carryforward will not be realized. The Company recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as a component of income tax expense.

The Organization for Economic Co-operation and Development Inclusive Framework on Base Erosion and Profit Shifting has proposed a global minimum corporate tax rate of 15% on multi-national corporations, commonly referred to as the Pillar Two rules that has been agreed upon in principle by over 140 countries. Numerous foreign countries have enacted legislation to implement the Pillar Two rules, effective beginning January 1, 2024, or are expected to enact similar legislation. As of June 30, 2024, the Company did not meet the consolidated revenue threshold and is not subject to the GloBE Rules under Pillar Two. The Company will continue to monitor the implementation of rules in the jurisdictions in which it operates.

15. Fair Value Measurements

The Company records the fair value of assets and liabilities in accordance with ASC 820, *Fair Value Measurement* (“ASC 820”). ASC 820 defines fair value as the price received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and in the principal or most advantageous market for that asset or liability. The fair value should be calculated based on assumptions that market participants would use in pricing the asset or liability, not on assumptions specific to the entity.

In addition to defining fair value, ASC 820 expands the disclosure requirements around fair value and establishes a fair value hierarchy for valuation inputs. The hierarchy prioritizes the inputs into three levels based on the extent to which inputs used in measuring fair value are observable in the market. Each fair value measurement is reported in one of the three levels, which is determined by the lowest level input that is significant to the fair value measurement in its entirety.

These levels are:

- Level 1 — quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2 — quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.
- Level 3 — unobservable inputs reflecting management’s own assumptions about the inputs used in pricing the asset or liability at fair value.

There were no transfers between Level 1, Level 2, or Level 3 during the six months ended June 30, 2024. Financial instruments not recorded at fair value on a recurring basis include equity method investments that have not been remeasured or impaired in the current period, such as our investments in HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund.

Assets and liabilities measured at fair value on a recurring basis are summarized below (in thousands):

			As of June 30, 2024		
	Carrying Amount	Fair Value	Fair Value Measurements		
			Level 1	Level 2	Level 3
Liabilities					
Contingent consideration	\$ 90,620	\$ 90,620	\$ —	\$ —	\$ 90,620
			As of December 31, 2023		
	Carrying Amount	Fair Value	Fair Value Measurements		
			Level 1	Level 2	Level 3
Liabilities					
Contingent consideration	126,216	126,216	—	—	126,216

[Table of Contents](#)

The liabilities measured at fair value on a recurring basis that have unobservable inputs and are therefore categorized as level 3 are related to contingent consideration. The fair value as of June 30, 2024 of \$90.6 million is comprised of contingent consideration related to the Joule Processing LLC (“Joule”) acquisition in 2022 and the Frames Holding B.V. (“Frames”) acquisition in 2021.

In connection with the Joule acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$41.7 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$61.4 million and \$75.5 million as of June 30, 2024 and December 31, 2023, respectively. The decrease compared to the year ended December 31, 2023 was primarily due to payments that reduced the fair value of the liability by \$10.0 million during the first quarter of 2024. A decrease of \$4.1 million was recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations for the six months ended June 30, 2024, partially offset by an increase of \$3.4 million for the three months ended June 30, 2024.

In connection with the Frames acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$29.1 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$29.2 million and \$31.8 million as of June 30, 2024 and December 31, 2023, respectively. The decrease compared to the year ended December 31, 2023 was primarily due to a decrease of \$1.6 million recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations for the six months ended June 30, 2024, partially offset by an increase of \$0.9 million for the three months ended June 30, 2024. A further decrease of \$0.3 million and \$1.0 million for the three and six months ended June 30, 2024 was due to foreign currency translation gains.

In connection with the United Hydrogen Group Inc. (“UHG”) acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$1.1 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$0 and \$0.9 million as of June 30, 2024 and December 31, 2023, respectively. The decrease of \$0.9 million was due to payments that reduced the fair value of the liability by \$1.0 million during the three months ended June 30, 2024. Partially offsetting this decrease was an increase of \$0 and \$0.1 million recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations during the three and six months ended June 30, 2024, respectively. The \$1.0 million payment made during the second quarter of 2024 settled the remaining earn-out obligation.

In connection with the Giner acquisition, the Company initially recorded on its unaudited interim condensed consolidated balance sheet a liability of \$16.0 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$0 million and \$18.0 million as of June 30, 2024 and December 31, 2023, respectively. The decrease of \$18.0 million was due to payments that reduced the fair value of the liability by \$18.2 million during the three months ended June 30, 2024. Furthermore, an increase of \$0.2 million was recorded in change in fair value of contingent consideration in the unaudited interim condensed consolidated statement of operations for the six months ended June 30, 2024, partially offset by a decrease of \$0.5 million for the three months ended June 30, 2024. The \$18.2 million payment during the second quarter of 2024 was paid in common stock and warrants and settled the remaining obligation of the earn-out. As part of the \$18.2 million settlement of Giner’s earn-out obligation on May 24, 2024, the Company issued warrants to purchase the Company’s shares of common stock and the Company filed a prospectus supplement registering for resale up to 3,461,371 shares of the Company’s common stock issuable upon exercise of the warrants that were issued in connection with such earn-out obligation. The warrants have not been exercised as of June 30, 2024.

In the unaudited interim condensed consolidated balance sheets, contingent consideration is recorded in the contingent consideration, loss accrual for service contracts, and other current liabilities financial statement line item, and was comprised of the following unobservable inputs as of June 30, 2024:

Financial Instrument	Fair Value	Valuation Technique	Unobservable Input	Range (weighted average)
Contingent consideration	\$ 90,620	Scenario based method	Credit spread	13.51%
			Discount rate	17.91% - 18.41%
	<u>90,620</u>			

[Table of Contents](#)

In the unaudited interim condensed consolidated balance sheets, contingent consideration is recorded in the contingent consideration, loss accrual for service contracts, and other current liabilities financial statement line item, and was comprised of the following unobservable inputs as of December 31, 2023:

Financial Instrument	Fair Value	Valuation Technique	Unobservable Input	Range (weighted average)
Contingent consideration	\$ 126,216	Scenario based method	Credit spread	13.61%
			Discount rate	17.71% - 19.06%
	<u>126,216</u>			

The change in the carrying amount of Level 3 liabilities during the six months ended June 30, 2024 was as follows (in thousands):

		Six months ended June 30, 2024
Beginning balance as of December 31, 2023	\$	126,216
Cash payments		(10,000)
Change in fair value of contingent consideration		(9,200)
Foreign currency translation adjustment		(690)
Ending balance as of March 31, 2024	\$	106,326
Cash payments		(1,000)
Payment settled in common stock and warrants		(18,241)
Change in fair value of contingent consideration		3,768
Foreign currency translation adjustment		(233)
Ending balance as of June 30, 2024	\$	<u>90,620</u>

16. Investments

Equity Method Investments

As of June 30, 2024 and December 31, 2023, the Company accounted for the following investments in the investee's common stock under the equity method, which are included in the investments in non-consolidated entities and non-marketable equity securities on the unaudited interim condensed consolidated balance sheets (amounts in thousands):

Investee	Formation Date	As of June 30, 2024		As of December 31, 2023	
		Common Stock Ownership %	Carrying Value	Common Stock Ownership %	Carrying Value
HyVia	Q2 2021	50%	\$ 10,445	50%	\$ (2,068)
AccionaPlug	Q4 2021	50%	3,816	50%	3,198
Clean H2 Infra Fund	Q4 2021	5%	26,510	5%	13,357
SK Plug Hyverse	Q1 2022	49%	53,424	49%	41,609
			<u>\$ 94,195</u>		<u>\$ 56,096</u>

As of December 31, 2023, the Company's investment in HyVia was negative due to historical losses. The Company is committed to fund its share of losses of the joint venture and, therefore, continued to record losses as incurred. The negative equity investment as of December 31, 2023 was recorded on the unaudited interim condensed consolidated balance sheet to the contingent consideration, loss accrual for service contracts, and other liabilities financial statement line item.

During the three months ended June 30, 2024, the Company contributed approximately \$16.1 million, \$0, \$16.0 million and \$9.7 million to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively. During the three months ended June 30, 2023, the Company contributed approximately \$0, \$0.8 million, \$0 and \$3.3 million to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively.

[Table of Contents](#)

During the six months ended June 30, 2024, the Company contributed approximately \$32.3 million, \$1.7 million, \$16.0 million and \$13.7 million to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively. During the six months ended June 30, 2023, the Company contributed approximately \$22.3 million, \$0.8 million, \$17.8 million and \$3.3 million to HyVia, AccionaPlug, SK Plug Hyverse and Clean H2 Infra Fund, respectively.

The Company's capital commitments related to its equity method investments as of June 30, 2024 includes \$23.7 million to be made during the remainder of 2024.

17. Operating and Finance Lease Liabilities

As of June 30, 2024, the Company had operating leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash and security deposits (see also Note 19, "Commitments and Contingencies") as summarized below. These leases expire over the next one to seven years. Minimum rent payments under operating leases are recognized on a straight-line basis over the term of the lease.

Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote. At the end of the lease term, the leased assets may be returned to the lessor by the Company, the Company may negotiate with the lessor to purchase the assets at fair market value, or the Company may negotiate with the lessor to renew the lease at market rental rates. No residual value guarantees are contained in the leases. No financial covenants are contained within the lease; however, the lease contains customary operational covenants such as the requirement that the Company properly maintain the leased assets and carry appropriate insurance. The leases include credit support in the form of either cash, collateral or letters of credit. See Note 19, "Commitments and Contingencies", for a description of cash held as security associated with the leases.

The Company has finance leases associated with its property and equipment in Latham, New York and at fueling customer locations.

Future minimum lease payments under operating and finance leases (with initial or remaining lease terms in excess of one year) as of June 30, 2024 were as follows (in thousands):

	Operating Lease Liability	Finance Lease Liability	Total Lease Liabilities
Remainder of 2024	\$ 50,083	\$ 6,041	\$ 56,124
2025	95,589	15,000	110,589
2026	86,743	12,142	98,885
2027	73,066	8,260	81,326
2028	50,655	1,931	52,586
2029 and thereafter	149,565	3,300	152,865
Total future minimum payments	505,701	46,674	552,375
Less imputed interest	(175,045)	(5,942)	(180,987)
Total	<u>\$ 330,656</u>	<u>\$ 40,732</u>	<u>\$ 371,388</u>

Rental expense for all operating leases was \$25.9 million and \$23.3 million for the three months ended June 30, 2024 and 2023, respectively. Rental expense for all operating leases was \$52.2 million and \$45.2 million for the six months ended June 30, 2024 and 2023, respectively.

As of both June 30, 2024 and December 31, 2023, security deposits associated with sale/leaseback transactions were \$7.4 million, and were included in other assets in the unaudited interim condensed consolidated balance sheets.

Other information related to the operating leases are presented in the following table:

	Six months ended		Six months ended	
	June 30, 2024		June 30, 2023	
Cash payments - operating cash flows (in thousands)	\$	49,932	\$	43,304
Weighted average remaining lease term (years)		7.15		6.16
Weighted average discount rate		11.3%		11.2%

Finance lease costs include amortization of the right of use assets (i.e., depreciation expense) and interest on lease liabilities (i.e., interest and other expense, net in the unaudited interim condensed consolidated statement of operations) and were \$1.8 million and \$1.9 million for the three months ended June 30, 2024, and 2023, respectively, and were \$3.7 million and \$3.7 million for the six months ended June 30, 2024, and 2023, respectively.

As of June 30, 2024 and December 31, 2023, the right of use assets associated with finance leases, net was \$54.7 million and \$57.3 million, respectively. The accumulated depreciation for these right of use assets was \$11.2 million and \$9.0 million at June 30, 2024 and December 31, 2023, respectively.

Other information related to the finance leases are presented in the following table:

	Six months ended		Six months ended	
	June 30, 2024		June 30, 2023	
Cash payments - operating cash flows (in thousands)	\$	1,488	\$	1,587
Cash payments - financing cash flows (in thousands)	\$	4,586	\$	4,153
Weighted average remaining lease term (years)		3.47		3.47
Weighted average discount rate		6.8%		6.8%

18. Finance Obligation

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation as of June 30, 2024 was \$314.8 million, \$76.7 million and \$238.1 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at December 31, 2023 was \$350.8 million, \$74.0 million and \$276.8 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The amount is amortized using the effective interest method. Interest expense recorded related to finance obligations for the three months ended June 30, 2024 and 2023 was \$9.4 million and \$9.8 million, respectively. Interest expense recorded related to finance obligations for the six months ended June 30, 2024 and 2023 was \$19.4 million and \$19.0 million, respectively.

In prior periods, the Company entered into sale/leaseback transactions that were accounted for as financing transactions and reported as part of finance obligations. The outstanding balance of finance obligations related to sale/leaseback transactions as of June 30, 2024 was \$15.9 million, \$8.9 million and \$7.0 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at December 31, 2023 was \$17.6 million, \$10.0 million and \$7.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet.

[Table of Contents](#)

Future minimum payments under finance obligations notes above as of June 30, 2024 were as follows (in thousands):

	Sale of Future Revenue - Debt	Sale/Leaseback Financings	Total Finance Obligations
Remainder of 2024	\$ 54,902	\$ 8,715	\$ 63,617
2025	104,547	2,229	106,776
2026	87,824	2,229	90,053
2027	71,253	2,229	73,482
2028	51,188	2,015	53,203
2029 and thereafter	25,504	1,131	26,635
Total future minimum payments	395,218	18,548	413,766
Less imputed interest	(80,437)	(2,676)	(83,113)
Total	\$ 314,781	\$ 15,872	\$ 330,653

Other information related to the above finance obligations are presented in the following table:

	Six months ended June 30, 2024	Six months ended June 30, 2023
Cash payments (in thousands)	\$ 57,319	\$ 49,256
Weighted average remaining term (years)	4.06	4.78
Weighted average discount rate	11.3%	11.2%

The fair value of the Company's total finance obligations approximated their carrying value as of June 30, 2024 and December 31, 2023.

19. Commitments and Contingencies

Restricted Cash

In connection with certain of the above noted sale/leaseback agreements, cash of \$525.6 million and \$573.5 million was required to be restricted as security as of June 30, 2024 and December 31, 2023, respectively, which restricted cash will be released over the lease term. As of June 30, 2024 and December 31, 2023, the Company also had certain letters of credit backed by security deposits totaling \$340.7 million and \$370.7 million, respectively, of which \$305.6 million and \$340.0 million are security for the above noted sale/leaseback agreements, respectively, and \$35.1 million and \$30.7 million are customs related letters of credit, respectively.

As of June 30, 2024 and December 31, 2023, the Company had \$77.1 million and \$76.8 million held in escrow related to the construction of certain hydrogen production plants, respectively.

The Company also had \$0.1 million and \$1.2 million of consideration held by our paying agent in connection with each of the Joule and CIS acquisitions, respectively, reported as restricted cash as of June 30, 2024, with a corresponding accrued liability on the Company's unaudited interim condensed consolidated balance sheet. Additionally, the Company had \$11.8 million and \$11.7 million in restricted cash as collateral resulting from the Frames acquisition as of June 30, 2024 and December 31, 2023, respectively.

Litigation

Legal matters are defended and handled in the ordinary course of business. The outcome of any such matters, regardless of the merits, is inherently uncertain; therefore, assessing the likelihood of loss and any estimated damages is difficult and subject to considerable judgment. We describe below those legal matters for which a material loss is either (i) possible but not probable, and/or (ii) not reasonably estimable at this time. Liabilities for loss contingencies arising

from claims, assessments, litigation, fines, and penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. Legal costs incurred in connection with loss contingencies are expensed as incurred. The Company has not recorded any accruals related to any legal matters.

Securities Litigation and Related Stockholder Derivative Litigation

2021 Securities Action and Related Derivative Litigation

Two actions are pending in which alleged stockholders of the Company assert claims derivatively, on the Company's behalf, based on allegations and claims that had been asserted in a putative securities class action, *In re Plug Power, Inc. Securities Litigation*, No. 1:21-cv-2004 (S.D.N.Y. (the "2021 Securities Action"). In an opinion and order entered in August 2023, the district court dismissed the 2021 Securities Action with prejudice, and the plaintiffs in that action did not appeal.

A consolidated stockholder derivative action relating to the claims and allegations in the 2021 Securities Action is pending in the Court of Chancery for the State of Delaware, styled *In re Plug Power Inc. Stockholder Derivative Litigation*, Cons. C.A. No. 2022-0569-KSJM (Del. Ch.). By stipulation and order, the consolidated action was stayed until motions to dismiss were finally resolved in the 2021 Securities Action. On March 8, 2024, the alleged stockholder plaintiffs filed a consolidated amended complaint in which claims have been asserted against our officers Andrew J. Marsh, Paul B. Middleton, Gerard L. Conway, Jr., and Keith Schmid, and against our current or former directors George C. McNamee, Gary K. Willis, Maureen O. Helmer, Johannes M. Roth, Gregory L. Kenausis, Lucas Schneider, and Jonathan Silver. The Company is named as nominal defendant. Based on allegations in the first and second amended complaints in the 2021 Securities Action, the plaintiffs assert claims against the individual defendants for alleged breaches of fiduciary duty, disgorgement, and unjust enrichment based on alleged transactions in the Company's securities while allegedly in possession of material non-public information concerning (i) the Company's financial accounting prior to the announcement that the Company would need to restate certain financial statements and (ii) the potential amendment and termination of a warrant agreement between the Company and a significant customer. On May 10, 2024, the Company, as nominal defendant, and all of the individual defendants filed a motion to dismiss (a) for failure to make a pre-suit demand or to adequately allege demand futility and (b) by the individual defendants, for failure to state a claim. Oral argument has been scheduled on the motion to be held on September 20, 2024.

On May 13, 2021, alleged stockholder Romario St. Clair filed a complaint in the Supreme Court of the State of New York, County of New York, asserting claims derivatively on behalf of the Company against certain current or former directors and officers of the Company. The action is styled *St. Clair v. Plug Power Inc. et al.*, Index No. 653167/2021 (N.Y. Sup. Ct., N.Y. Cty.). By stipulation and order, the action was stayed until motions to dismiss were finally resolved in the 2021 Securities Action. On March 25, 2024, the alleged stockholder plaintiff filed an amended complaint in which claims have been asserted against Mr. Marsh, Mr. Middleton, Mr. McNamee, Mr. Willis, Ms. Helmer, Mr. Kenausis, Mr. Roth, Mr. Schneider, and Mr. Silver, with the Company named as nominal defendant. As had been alleged in the 2021 Securities Action, the amended complaint alleges that the individual defendants knew or consciously disregarded that the Company was experiencing known but undisclosed material weaknesses in its internal controls over financial reporting and had made certain accounting errors later corrected in the Company's financial restatement in 2021. The complaint further alleges that Mr. Marsh and Mr. Middleton engaged in transactions in the Company's securities before these issues were disclosed. The plaintiff asserts claims against the individual defendants, derivatively on behalf of the Company, for breach of fiduciary and unjust enrichment. On July 12, 2024, the parties filed a stipulation of discontinuance of the action without prejudice, which the Court approved in an order entered on the same date.

2023 Securities Action and Related Derivative Litigation

A consolidated action is pending in the United States District Court for the District of Delaware asserting claims under the federal securities laws against the Company and certain of its senior officers on behalf of a putative class of purchasers of the Company's securities, styled *In re Plug Power, Inc. Securities Litigation*, No. 1:23-cv-00576-MN (the "2023 Securities Action"). The plaintiffs filed a consolidated complaint on September 28, 2023, in which they assert claims under the federal securities laws against the Company and four of its senior officers, Mr. Marsh, Mr. Middleton, Sanjay

Shrestha, and former officer David Mindnich, on behalf of a putative class of purchasers of Plug Power common stock between January 19, 2022 and March 1, 2023. The complaint alleges that the defendants made “materially false and/or misleading statements” about the Company’s business and operations, including that “the Company was unable to effectively manage its supply chain and product manufacturing, resulting in reduced revenues and margins, increased inventory levels, and several large deals being delayed until at least 2023, among other issues. The defendants filed a motion to dismiss the complaint on December 14, 2023, and briefing was completed in March 2024. All proceedings are stayed pending resolution of the motion to dismiss.

Beginning on September 13, 2023, three separate actions were filed in the U.S. District Court for the District of Delaware and in the U.S. District Court for the Southern District of New York asserting claims derivatively and on behalf of the Company against certain former and current Company officers and directors based on the claims asserted in the 2023 Securities Action. Those cases have been consolidated in the District of Delaware under the caption *In re Plug Power, Inc. Stockholder Deriv. Litig.*, No. 1:23-cv-01007-MN (D. Del.). The defendants named in the constituent complaint were Mr. Marsh, Mr. Middleton, Mr. Mindnich, Martin Hull, Ms. Helmer, Mr. Kenausis, Mr. McNamee, Mr. Schneider, Mr. Silver, Mr. Willis, and current or former directors Jean Bua, Kavita Mahtani, and Kyungyeol Song. In an order entered on April 26, 2024, the Court approved the parties’ stipulation to stay all proceedings until motions to dismiss have been resolved in the 2023 Securities Action.

2024 Securities Litigation

On March 22, 2024, Ete Adote filed a complaint in the United States District Court for the Northern District of New York asserting claims under the federal securities laws against the Company, Mr. Marsh, and Mr. Middleton, on behalf of an alleged class of purchasers of Plug common stock between May 9, 2023 and January 16, 2024, styled *Adote v. Plug Power, Inc. et al.*, No. 1:24-cv-00406-MAD-DJS (N.D.N.Y.). The allegations in the 2024 Securities Action are substantially similar to those in the consolidated 2023 Securities Action but cover a different putative class period that extends into 2024. On April 30, 2024, a second complaint asserting substantially similar claims against the same defendants, but on behalf of a putative class of purchasers of Plug Power common stock between March 1, 2023 and January 16, 2024, was filed in the Northern District of New York, styled *Lee v. Plug Power, et al.*, No. 1:24;cv-0598-MAD-DJS (N.D.N.Y.). The Court has approved stipulations in both actions extending the time for all defendants to respond to any pleading until after the Court appoints lead plaintiff(s).

Other Litigation

On May 2, 2023, a lawsuit entitled *Jacob Thomas and JTurbo Engineering & Technology, LLC v. Joule Processing, LLC and Plug Power Inc.*, Case No. 4:23-cv-01615, was filed in the United States District Court for the Southern District of Texas against Joule Processing, LLC and Plug Power Inc. The complaint alleges misappropriation of trade secrets under both the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, and the Texas Uniform Trade Secrets Act, three breach of contract claims, and four common law claims under Texas law. On December 5, 2023, the Court granted, in part, the partial motion to dismiss filed by Joule Processing, LLC and Plug Power Inc., and the Court dismissed with prejudice one of the breach of contract claims and the four common law claims. The Court also transferred another of the breach of contract claims to the United States District Court for the Northern District of New York, Case No. 1:23-cv-01528. That claim was dismissed without prejudice, and that matter was closed on April 4, 2024. Currently pending before the United States District Court for the Southern District of Texas is Plaintiff[s]’ Verified Amended Application for Temporary Restraining Order, Preliminary Injunction and Permanent Injunctive Relief (the “Amended Application for Injunctive Relief”). Joule Processing, LLC and Plug Power Inc. filed their Response in Opposition to the Amended Application for Injunctive Relief on March 27, 2024, and Jacob Thomas and JTurbo Engineering & Technology, LLC filed their Reply in Support of the Amended Application for Injunctive Relief on April 4, 2024.

On July 24, 2023, an action entitled *Felton v. Plug Power, Inc.*, Case No. 1:23-cv-887, was filed in the U.S. District Court for the Northern District of New York asserting claims against the Company pursuant to the New York State Human Rights Law. The complaint asserts that the plaintiff is seeking damages to redress injuries suffered as a result of harassment and discrimination on the basis of his race, together with creating a hostile work environment, and retaliation. Plug disagrees with plaintiff’s representations about his time at Plug and intends to vigorously defend against his

allegations. Plaintiff's counsel moved to withdraw from the case, which the court approved on March 18, 2024, and therefore plaintiff is now *pro se*. The current discovery deadline is October 22, 2024.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to credit risk consist principally of cash, cash equivalents, restricted cash and accounts receivable. Cash and restricted cash are maintained in accounts with financial institutions, which, at times may exceed the Federal depository insurance coverage of \$250 thousand. The Company has not experienced losses on these accounts and management believes, based upon the quality of the financial institutions, that the credit risk with regard to these deposits is not significant.

Concentrations of credit risk with respect to receivables exist due to the limited number of select customers with whom the Company has commercial sales arrangements. To mitigate credit risk, the Company performs appropriate evaluation of a prospective customer's financial condition.

As of June 30, 2024, one customer comprised approximately 15.2% of the Company's consolidated accounts receivable balance. At December 31, 2023, one customer comprised approximately 21.5% of the Company's consolidated accounts receivable balance.

For purposes of assigning a customer to a sale/leaseback transaction completed with a financial institution, the Company considers the end user of the assets to be the ultimate customer. For the three months ended June 30, 2024 and 2023, three and two customers accounted for 46.8% and 63.0% of total consolidated revenues, respectively. For the six months ended June 30, 2024 and 2023, two customers accounted for 39.9% and 41.9% of total consolidated revenues, respectively.

Guarantee

On May 30, 2023, our joint venture, HyVia, entered into a government grant agreement with Bpifrance. As part of the agreement, our wholly-owned subsidiary, Plug Power France, was required to issue a guarantee to Bpifrance in the amount of €20 million through the end of January 2027. Plug Power France is liable to the extent of the guarantee for sums due to Bpifrance from HyVia under the agreement based on the difference between the total amount paid by Bpifrance and the final amount certified by HyVia and Bpifrance. As part of the agreement, there are certain milestones that HyVia is required to meet, and the nonperformance of these milestones or termination of this agreement could result in this guarantee being called upon. As of June 30, 2024, no payments related to this guarantee have been made by the Company and Plug Power France did not record a liability for this guarantee as the likelihood of the guarantee being called upon is remote.

Unconditional Purchase Obligations

The Company has entered into certain off-balance sheet commitments that require the future purchase of goods or services ("unconditional purchase obligations"). The Company's unconditional purchase obligations primarily consist of supplier arrangements, take or pay contracts and service agreements. For certain vendors, the Company's unconditional obligation to purchase a minimum quantity of raw materials at an agreed upon price is fixed and determinable; while certain other raw material costs will vary due to product forecasting and future economic conditions.

[Table of Contents](#)

Future payments under non-cancelable unconditional purchase obligations with a remaining term in excess of one year as of June 30, 2024, were as follows (in thousands):

Remainder of 2024	\$ 27,185
2025	8,023
2026	8,023
2027	2,638
2028	—
2029 and thereafter	—
Total	<u>45,869</u>

20. Employee Benefit Plans

2011 and 2021 Stock Option and Incentive Plan

The Company has issued stock-based awards to employees and members of its Board of Directors (the “Board”) consisting of stock options and restricted stock and restricted stock unit awards. The Company accounts for all stock-based awards to employees and members of the Board as compensation costs in the consolidated financial statements based on their fair values measured as of the date of grant. These costs are recognized over the requisite service period. Stock-based compensation costs recognized, excluding the Company’s matching contributions of \$3.1 million and \$3.0 million to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were \$22.7 million and \$36.9 million for the three months ended June 30, 2024 and 2023, respectively. Stock-based compensation costs recognized, excluding the Company’s matching contributions of \$6.3 million and \$6.0 million to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were \$33.1 million and \$77.0 million for the six months ended June 30, 2024 and 2023, respectively. The methods and assumptions used in the determination of the fair value of stock-based awards are consistent with those described in our 2023 Form 10-K.

The components and classification of stock-based compensation expense, excluding the Company’s matching contributions to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were as follows (in thousands):

	Three months ended		Six months ended	
	June 30, 2024	June 30, 2023	June 30, 2024	June 30, 2023
Cost of sales	\$ 2,079	\$ 2,439	\$ 4,085	\$ 5,116
Research and development	2,251	1,765	4,593	4,047
Selling, general and administrative	18,416	32,657	24,440	67,886
	<u>\$ 22,746</u>	<u>\$ 36,861</u>	<u>\$ 33,118</u>	<u>\$ 77,049</u>

Option Awards

The Company issues options that are time and performance-based awards. All option awards are determined to be classified as equity awards.

Service Stock Options Awards

The following table reflects the service stock option activity for the six months ended June 30, 2024:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Terms	Aggregate Intrinsic Value
Options outstanding at December 31, 2023	17,336,362	\$ 11.37	7.86	\$ 11,391
Options exercisable at December 31, 2023	8,288,944	11.84	6.18	7,250
Options unvested at December 31, 2023	9,047,418	10.94	9.39	4,141
Granted	4,968,125	2.51	—	—
Exercised	(32,500)	2.15	—	—
Forfeited	(2,018,782)	18.42	—	—
Options outstanding at June 30, 2024	<u>20,253,205</u>	\$ 8.51	7.53	\$ 464
Options exercisable at June 30, 2024	7,954,524	11.15	5.66	464
Options unvested at June 30, 2024	12,298,681	\$ 6.80	8.75	\$ —

The weighted average grant date fair value of the service stock options granted during the six months ended June 30, 2024 and 2023 was \$1.78 and \$6.76, respectively. The total intrinsic fair value of service stock options exercised during the six months ended June 30, 2024 and 2023 was \$39 thousand and \$1.8 million, respectively. The total fair value of the service stock options that vested during the six months ended June 30, 2024 and 2023 was approximately \$8.2 million and \$9.8 million, respectively.

Compensation cost associated with service stock options represented approximately \$5.4 million and \$6.9 million of the total share-based payment expense recorded for the three months ended June 30, 2024 and 2023, respectively. Compensation cost associated with service stock options represented approximately \$12.3 million and \$15.2 million of the total share-based payment expense recorded for the six months ended June 30, 2024 and 2023, respectively. As of June 30, 2024, there was approximately \$39.7 million of unrecognized compensation cost related to service stock option awards to be recognized over the weighted average remaining period of 1.98 years.

Performance Stock Option Awards

The following table reflects the performance stock option award activity for the six months ended June 30, 2024. Solely for the purposes of this table, the number of performance options is based on participants earning the maximum number of performance options (i.e. 200% of the target number of performance options):

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Terms	Aggregate Intrinsic Value
Options outstanding at December 31, 2023	21,925,000	\$ 21.32	5.27	\$ —
Options exercisable at December 31, 2023	2,782,000	26.9	4.7	—
Options unvested at December 31, 2023	19,143,000	20.50	5.35	—
Granted	2,452,500	2.41	6.82	—
Exercised	—	—	—	—
Forfeited	(2,250,000)	—	—	—
Options outstanding at June 30, 2024	<u>22,127,500</u>	\$ 19.33	4.94	\$ —
Options exercisable at June 30, 2024	4,038,667	20.99	4.74	—
Options unvested at June 30, 2024	18,088,833	\$ 18.96	4.98	\$ —

The weighted average grant-date fair value of the performance stock options granted during the six months ended June 30, 2024 and 2023 was \$0.53 and \$4.32, respectively. There were no performance stock options exercised during the

six months ended June 30, 2024 or 2023. The total fair value of the performance stock options that vested was \$5.6 million and \$0 during the six months ended June 30, 2024 and 2023, respectively.

Compensation cost associated with performance stock options represented approximately \$7.9 million and \$17.9 million of the total share-based payment expense recorded for the three months ended June 30, 2024 and 2023, respectively. Compensation cost associated with performance stock options represented approximately \$1.8 million and \$35.3 million of the total share-based payment expense recorded for the six months ended June 30, 2024 and 2023, respectively. Compensation cost for the six months ended June 30, 2024 includes non-cash reversals due to forfeitures of unvested performance stock options of (\$15.2) million during the first quarter of 2024. The non-cash compensation expense reversals were offset by compensation costs of \$17.0 million during the six months ended June 30, 2024. As of June 30, 2024, there was approximately \$14.4 million of unrecognized compensation cost related to performance stock option awards to be recognized over the weighted average remaining period of 1.43 years.

As of June 30, 2024, there were 3,904,333 unvested performance stock options for which the employee requisite service period had not been rendered but were expected to vest. The aggregate intrinsic value of these unvested performance stock options was \$0 as of June 30, 2024. The weighted average exercise price of these unvested performance stock options was \$14.66 and the weighted average remaining contractual term was 5.29 years as of June 30, 2024.

Restricted Common Stock and Restricted Stock Unit Awards

The following table reflects the restricted common stock and restricted stock unit activity for the six months ended June 30, 2024 (in thousands except share amounts):

	Shares	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
Unvested restricted stock at December 31, 2023	6,732,884	\$ 15.66	\$ 30,298
Granted	1,054,057	2.85	—
Vested	(573,045)	17.84	—
Forfeited	(931,081)	17.88	—
Unvested restricted stock at June 30, 2024	6,282,815	\$ 12.98	\$ 14,639

The weighted average grant-date fair value of the restricted common stock and restricted stock unit awards granted during the six months ended June 30, 2024 and 2023 was \$2.85 and \$10.42, respectively. The total fair value of restricted shares of common stock and restricted stock unit awards that vested for the six months ended June 30, 2024 and 2023 was \$10.2 million and \$16.8 million, respectively.

Compensation cost associated with restricted common stock and restricted stock unit awards represented approximately \$9.4 million and \$12.0 million for the three months ended June 30, 2024 and 2023, respectively. Compensation cost associated with restricted common stock and restricted stock unit awards represented approximately \$19.0 million and \$26.6 million for the six months ended June 30, 2024 and 2023, respectively. As of June 30, 2024, there was \$51.5 million of unrecognized compensation cost related to restricted common stock and restricted stock unit awards to be recognized over the weighted average period of 1.65 years.

Included in the total unvested restricted common stock and restricted stock units as of June 30, 2024, there were 375,000 restricted common stock units outstanding with a performance target. The Company recorded expense associated with the restricted common stock units with a performance target of \$0.7 million and \$0 for the three months ended June 30, 2024 and 2023, respectively. The Company recorded expense associated with the restricted common stock units with a performance target of \$1.3 million and \$0 for the six months ended June 30, 2024 and 2023, respectively. As of June 30, 2024 there was \$1.8 million of unrecognized compensation cost related to the restricted common stock units outstanding with a performance target to be recognized over the weighted average period of 2.08 years.

401(k) Savings & Retirement Plan

The Company issued 2,085,222 shares of common stock and 547,174 shares of common stock pursuant to the Plug Power Inc. 401(k) Savings & Retirement Plan during the six months ended June 30, 2024 and 2023, respectively.

The Company’s expense for this plan was approximately \$3.1 million and \$3.0 million during the three months ended June 30, 2024 and 2023, respectively. The Company’s expense for this plan was approximately \$6.3 million and \$6.0 million during the six months ended June 30, 2024 and 2023, respectively.

Non-Employee Director Compensation

The Company granted 73,632 shares of common stock and 11,466 shares of common stock to non-employee directors as compensation during the three months ended June 30, 2024 and 2023, respectively. The Company granted 127,230 shares of common stock and 21,782 shares of common stock to non-employee directors as compensation during the six months ended June 30, 2024 and 2023, respectively. All common stock issued is fully vested at the time of issuance and is valued at fair value on the date of issuance. The Company’s share-based compensation expense in connection with non-employee director compensation was approximately \$0.2 million and \$0.1 million during the three months ended June 30, 2024 and 2023, respectively. The Company’s share-based compensation expense in connection with non-employee director compensation was approximately \$0.4 million and \$0.2 million during the six months ended June 30, 2024 and 2023, respectively.

21. Segment and Geographic Area Reporting

Our organization is managed from a sales perspective based on “go-to-market” sales channels, emphasizing shared learning across end-user applications and common supplier/vendor relationships. These sales channels are structured to serve a range of customers for our products and services. As a result of this structure, we concluded that we have one operating and reportable segment — the design, development and sale of hydrogen products and solutions that help customers meet their business goals while decarbonizing their operations. Our chief executive officer was identified as the chief operating decision maker (CODM). All significant operating decisions made by management are largely based upon the analysis of Plug Power Inc. on a total company basis, including assessments related to our incentive compensation plans.

The revenue and long-lived assets based on geographic location are as follows (in thousands):

	Revenues		Revenues		Long-Lived Assets	
	Three months ended		Six months ended		As of	
	June 30, 2024	June 30, 2023	June 30, 2024	June 30, 2023	June 30, 2024	December 31, 2023
North America	\$ 113,113	\$ 235,521	\$ 218,849	\$ 397,327	\$ 1,903,747	\$ 1,881,315
Europe	21,182	12,143	29,756	52,259	151,268	122,489
Asia	4,112	5,998	9,179	9,280	—	—
Other	4,943	6,520	5,830	11,602	2,854	884
Total	\$ 143,350	\$ 260,182	\$ 263,614	\$ 470,468	\$ 2,057,869	\$ 2,004,688

22. Related Party Transactions

HyVia

Our 50/50 joint venture, HyVia, manufactures and sells fuel cell powered electric light commercial vehicles (“FCE-LCVs”) and supplies hydrogen fuel and fueling stations to support the FCE-LCV market, in each case primarily in Europe. For the three months ended June 30, 2024 and 2023, we recognized related party total revenue of \$0.7 million and \$2.3 million, respectively. For the six months ended June 30, 2024 and 2023, we recognized related party total revenue of \$3.8 million and \$6.1 million, respectively. As of June 30, 2024 and December 31, 2023, we had related party outstanding accounts receivable of \$0.6 million and \$2.3 million, respectively.

SK Plug Hyverse

Our 49/51 joint venture, SK Plug Hyverse, aims to provide hydrogen fuel cell systems, hydrogen fueling stations, electrolyzers and clean hydrogen to the Korean and other selected Asian markets. For the three months ended June 30, 2024 and 2023, we recognized related party total revenue of \$1.1 million and \$0.8 million, respectively. For the six months ended June 30, 2024 and 2023, we recognized related party total revenue of \$4.5 million and \$1.0 million, respectively. As of June 30, 2024 and December 31, 2023, we had related party outstanding accounts receivable of \$0.5 million and \$1.7 million, respectively.

23. Restructuring

In February 2024, in a strategic move to enhance our financial performance and ensure long-term value creation in a competitive market, we approved a comprehensive initiative that encompasses a broad range of measures, including operational consolidation, strategic workforce adjustments, and various other cost-saving actions (the “Restructuring Plan”). These measures are aimed at increasing efficiency, improving scalability, and maintaining our leadership position in the renewable energy industry. We began executing the Restructuring Plan in February 2024 and expect the Restructuring Plan to be completed in the second half of 2024, subject to local law and consultation requirements.

The determination of when we accrue for involuntary termination benefits under restructuring plans depends on whether the termination benefits are provided under an ongoing benefit arrangement or under a one-time benefit arrangement. We account for involuntary termination benefits that are provided pursuant to one-time benefit arrangements in accordance with ASC 420, *Exit or Disposal Cost Obligations* (“ASC 420”) whereas involuntary termination benefits that are part of an ongoing written or substantive plan are accounted for in accordance with ASC 712, *Nonretirement Postemployment Benefits* (“ASC 712”). We accrue a liability for termination benefits under ASC 420 in the period in which the plan is communicated to the employees and the plan is not expected to change significantly. For ongoing benefit arrangements, inclusive of statutory requirements, we accrue a liability for termination benefits under ASC 712 when the existing situation or set of circumstances indicates that an obligation has been incurred, it is probable the benefits will be paid, and the amount can be reasonably estimated. The restructuring charges that have been incurred but not yet paid are recorded in accrued expenses and other current liabilities in our unaudited interim condensed consolidated balance sheets, as they are expected to be paid within the next twelve months.

During the three months ended June 30, 2024, we incurred \$1.6 million in restructuring costs recorded as severance expenses of \$1.6 million and other restructuring costs of \$49 thousand in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. During the six months ended June 30, 2024, we incurred \$7.6 million in restructuring costs recorded as severance expenses of \$6.8 million and other restructuring costs of \$0.8 million in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. We expect to incur another \$0.1 million in restructuring costs in subsequent quarters, which are primarily related to severance expenses, and are expected to be incurred during the third quarter of 2024. The actual timing and amount of costs associated with these restructuring actions may differ from our current expectations and estimates and such differences may be material.

Severance expense recorded during the three and six months ended June 30, 2024 in accordance with ASC 420 was a result of the separation of full-time employees associated with the Restructuring Plan. As of June 30, 2024, \$1.6 million of accrued severance-related costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the third quarter of 2024. Other costs are represented by (1) \$0.2 million of legal and professional services costs, and (2) \$0.6 million of other one-time employee termination benefits. As of June 30, 2024, \$28 thousand of accrued other costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the third quarter of 2024.

24. Subsequent Events

Common Stock At Market Issuance Sales Agreement

From June 30, 2024 through the date of filing of this Quarterly Report on Form 10-Q, the Company sold 13,045,572 shares of common stock at a weighted-average sales price of \$2.35 per share for gross proceeds of \$30.7 million with related issuance costs of \$0.5 million.

Public Offering of Common Stock

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$2.54 per share for net proceeds of \$191.0 million after deduction of the underwriting discount and related offering expenses in an underwritten public offering with Morgan Stanley & Co. LLC. The Company granted the underwriter a 30-day option to purchase up to an additional 11,811,023 shares of common stock at the public offering price, less the underwriting discount.

Item 2 — Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with our accompanying unaudited interim condensed consolidated financial statements and notes thereto included within this Quarterly Report on Form 10-Q, and our audited and notes thereto included in our 2023 Form 10-K. In addition to historical information, this Quarterly Report on Form 10-Q and the following discussion contain statements that are not historical facts and are considered forward-looking within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. These forward-looking statements contain projections of our future results of operations or of our financial position or state other forward-looking information. In some cases, you can identify these statements by forward-looking words such as “believe”, “could”, “continue”, “estimate”, “expect”, “forecast”, “intend”, “may”, “should”, “will”, “would”, “plan”, “project” or the negative of such words or other similar words or phrases. We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Investors are cautioned not to unduly rely on forward-looking statements because they involve risks and uncertainties, and actual results may differ materially from those discussed as a result of various factors, including, but not limited to:

- the anticipated benefits and actual savings and costs resulting from the implementation of the Restructuring Plan that was announced in February 2024;
- our ability to achieve our business objectives and to continue to meet our obligations, which is dependent upon our ability to maintain a certain level of liquidity and will depend in part on our ability to manage our cash flows, including successfully implementing our cost savings initiatives;
- the risk that we continue to incur losses and might never achieve or maintain profitability;
- the risk that we will need to raise additional capital to fund our operations and such capital may not be available to us;
- the risk that we may not be able to expand our business or manage our future growth effectively;
- the risk of loss related to an inability to maintain an effective system of internal control over financial reporting;
- the risk that delays in or not completing our product development and hydrogen plant construction goals may adversely affect our revenue and profitability;
- the risk that we may not be able to obtain from our hydrogen suppliers a sufficient supply of hydrogen at competitive prices or the risk that we may not be able to produce hydrogen internally at competitive prices;
- our ability to achieve the forecasted revenue and costs on the sale of our products;
- the risk that we may not be able to convert all of our estimated future revenue into revenue and cash flows;
- the risk that purchase orders may not ship, be installed and/or converted to revenue, in whole or in part;
- the risk that some or all of the recorded intangible assets and property, plant, and equipment could be subject to impairment;
- the risks associated with global economic uncertainty, including inflationary pressures, fluctuating interest rates, currency fluctuations, and supply chain disruptions;
- the risk of elimination, reduction of, or changes in qualifying criteria for government subsidies and economic incentives for alternative energy products, including with regards to the impact of the Inflation Reduction Act on our business;
- the risk that our lack of extensive experience in manufacturing and marketing of certain of our products may impact our ability to manufacture and market said products on a profitable and large-scale commercial basis;
- the risk that a sale or issuance of a significant number of shares of stock could depress the market price of our common stock;
- the risk of dilution to our stockholders and/or impact to our stock price should we need to raise additional capital;
- the risk that negative publicity related to our business or stock could result in a negative impact on our stock value and profitability;
- our ability to leverage, attract and retain key personnel;
- the risk of increased costs associated with legal proceedings and legal compliance;
- the risk that a loss of one or more of our major customers, or the delay in payment or the failure to pay receivables by one of our major customers, could have a material adverse effect on our financial condition;
- the risk of potential losses related to any contract disputes;

[Table of Contents](#)

- the risk of potential losses related to any product liability claims;
- the cost and timing of developing, marketing, and selling our products;
- the risks involved with participating in joint ventures, including our ability or inability to execute our strategic growth plan through joint ventures;
- our ability to obtain financing arrangements to support the sale or leasing of our products and services to customers;
- the cost and availability of fuel and fueling infrastructures for our products;
- the risk that our convertible senior notes, if settled in cash, could have a material adverse effect on our financial results;
- the risk that our convertible note hedges may affect the value of our convertible senior notes and our common stock;
- the risks related to the use of flammable fuels in our products;
- the risks, liabilities, and costs related to environmental, health, and safety matters;
- market acceptance of our products and services;
- our ability to establish and maintain relationships with third parties with respect to product development, manufacturing, distribution, and servicing, and the supply of key product components;
- the risk that we may be unable to successfully pursue, integrate, or execute upon our new business ventures;
- the cost and availability of components and parts for our products;
- the risk that possible new tariffs could have a material adverse effect on our business;
- our ability to develop commercially viable products;
- our ability to reduce product and manufacturing costs;
- our ability to successfully market, distribute and service our products and services internationally;
- our ability to improve system reliability for our products;
- competitive factors, such as price competition and competition from other traditional and alternative energy companies;
- our ability to protect our intellectual property;
- the risks related to our operational dependency on information technology and the risk of the failure of such technology, including failure to effectively prevent, detect, and recover from security compromises or breaches, including cyber-attacks;
- the cost of complying with current and future federal, state and international governmental regulations;
- the risks associated with past and potential future acquisitions;
- the risks associated with geopolitical instability, including the conflicts in the Middle East and between Russia and Ukraine as well as tensions between U.S. and China and neighboring regions; and
- the volatility of our stock price.

The risks included here are not exhaustive, and additional factors could adversely affect our business and financial performance, including factors and risks discussed in the section titled “Risk Factors” included under Part I, Item 1A, in our 2023 Form 10-K and supplemented by Part II, Item 1A of the Quarterly Report on Form 10-Q for the quarter ended March 31, 2024 and Part II, Item 1A of this Quarterly Report on Form 10-Q. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for management to predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. These forward-looking statements speak only as of the date on which the statements were made. Except as may be required by applicable law, we do not undertake or intend to update any forward-looking statements after the date of this Quarterly Report on Form 10-Q.

References in this Quarterly Report on Form 10-Q to “Plug”, the “Company”, “we”, “our” or “us” refer to Plug Power Inc., including as the context requires, its subsidiaries.

Overview

Plug is facilitating the paradigm shift to an increasingly electrified world by innovating cutting-edge hydrogen and fuel cell solutions.

While we continue to develop commercially viable hydrogen and fuel cell product solutions, we have expanded our offerings to support a variety of commercial operations that can be powered with clean hydrogen. We provide electrolyzers that allow customers — such as refineries, producers of chemicals, steel, fertilizer and commercial refueling stations — to generate hydrogen on-site. We are focusing our efforts on (a) industrial mobility applications, including electric forklifts and electric industrial vehicles, at multi shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility, and environmental benefits; (b) production of hydrogen; and (c) stationary power systems that will support critical operations, such as data centers, microgrids, and generation facilities, in either a backup power or continuous power role, and replace batteries, diesel generators or the grid for telecommunication logistics, transportation, and utility customers. Plug expects to support these products and customers with an ecosystem of vertically integrated products that produce, transport, store and handle, dispense, and use hydrogen for mobility and power applications.

Our current product and service portfolio includes:

GenDrive: GenDrive is our hydrogen fueled PEM fuel cell system, providing power to material handling electric vehicles (“EVs”), including Class 1, 2, 3 and 6 electric forklifts, automated guided vehicles, and ground support equipment.

GenSure: GenSure is our stationary fuel cell solution providing scalable, modular PEM fuel cell power to support the backup and grid-support power requirements of the telecommunications, transportation, and utility sectors; our GenSure High Power Fuel Cell Platform supports large scale stationary power and data center markets.

ProGen: ProGen is our fuel cell stack and engine technology currently used globally in mobility and stationary fuel cell systems, and as engines in electric delivery vans. This includes Plug’s membrane electrode assembly (“MEA”), a critical component of the fuel cell stack used in zero-emission fuel cell EV engines.

GenFuel: GenFuel is our liquid hydrogen fueling, delivery, generation, storage, and dispensing system.

GenCare: GenCare is our ongoing “Internet of Things”-based maintenance and on-site service program for GenDrive fuel cell systems, GenSure fuel cell systems, GenFuel hydrogen storage and dispensing products and ProGen fuel cell engines.

GenKey: GenKey is our vertically integrated “turn-key” solution combining either GenDrive or GenSure fuel cell power with GenFuel fuel and GenCare aftermarket service, offering complete simplicity to customers transitioning to fuel cell power.

Electrolyzers: The design and implementation of 5MW and 10MW electrolyzer systems that are modular, scalable hydrogen generators optimized for clean hydrogen production. Electrolyzers generate hydrogen from water using electricity and a special membrane and “green” hydrogen is generated by using renewable energy inputs, such as solar or wind power.

Liquefaction Systems: Plug’s 15 ton-per-day and 30 ton-per-day liquefiers are engineered for high efficiency, reliability, and operational flexibility — providing consistent liquid hydrogen to customers. This design increases plant reliability and availability while minimizing parasitic losses like heat leak and seal gas losses.

Cryogenic Equipment: Engineered equipment including trailers and mobile storage equipment for the distribution of liquified hydrogen, oxygen, argon, nitrogen and other cryogenic gases.

Liquid Hydrogen: Liquid hydrogen provides an efficient fuel alternative to fossil-based energy. We produce liquid hydrogen through our electrolyzer systems and liquefaction systems. Liquid hydrogen supply will be used by customers in material handling operations, fuel cell electric vehicle fleets, and stationary power applications.

We provide our products and solutions worldwide through our direct sales force, and by leveraging relationships with original equipment manufacturers (“OEMs”) and their dealer networks. Plug is currently targeting Asia, Australia, Europe, Middle East and North America for expansion in adoption. The European Union has rolled out ambitious targets for the hydrogen economy, with the United Kingdom also taking steps in this direction, and Plug is seeking to execute on our strategy to become one of the European leaders in the hydrogen economy. This includes a targeted account strategy for material handling, securing strategic partnerships with European OEMs, energy companies, utility leaders and accelerating our electrolyzer business.

We manufacture our commercially viable products in Latham, New York; Rochester, New York; Slingerlands, New York; Houston, Texas; Lafayette, Indiana; and Spokane, Washington, and support liquid hydrogen production and logistics in Charleston, Tennessee and Kingsland, Georgia.

Results of Operations

Our primary sources of revenue are from sales of equipment, related infrastructure and other, services performed on fuel cell systems and related infrastructure, power purchase agreements, and fuel delivered to customers and related equipment. A certain portion of our sales result from acquisitions in legacy markets, which we are working to transition to renewable solutions. Revenue from sales of equipment, related infrastructure and other represents sales of our GenDrive units, GenSure stationary backup power units, cryogenic stationary and on road storage, hydrogen liquefaction systems, electrolyzers and hydrogen fueling infrastructure. Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. Revenue from power purchase agreements primarily represent payments received from customers who make monthly payments to access the Company’s GenKey solution. Revenue associated with fuel delivered to customers and related equipment represents the sale of hydrogen to customers that has been purchased by the Company from a third party or generated at our hydrogen production plant.

Provision for Common Stock Warrants

On August 24, 2022, the Company issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the “2022 Amazon Warrant”) to acquire up to 16,000,000 shares (the “2022 Amazon Warrant Shares”) of the Company’s common stock, par value \$.01 per share (the “common stock”), subject to certain vesting events described below under “Common Stock Transactions – Amazon Transaction Agreement in 2022”.

In 2017, in separate transactions, the Company issued a warrant to each of Amazon.com NV Investment Holdings LLC and Walmart to purchase up to 55,286,696 shares of the Company’s common stock, subject to certain vesting events described below under “Common Stock Transactions – Amazon Transaction Agreement in 2017” and “Common Stock Transactions – Walmart Transaction Agreement”. The Company recorded a portion of the estimated fair value of the warrants as a reduction of revenue based upon the projected number of shares of common stock expected to vest under the warrants, the proportion of purchases by Amazon, Walmart and their affiliates within the period relative to the aggregate purchase levels required for vesting of the respective warrants, and the then-current fair value of the warrants.

[Table of Contents](#)

The amount of provision for the Amazon and Walmart Warrants recorded as a reduction of revenue during the three and six months ended June 30, 2024 and 2023, respectively, is shown in the table below (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Sales of equipment, related infrastructure and other	\$ (661)	\$ (692)	\$ (2,928)	\$ (1,126)
Services performed on fuel cell systems and related infrastructure	(531)	(311)	(979)	(685)
Power purchase agreements	(1,713)	783	(2,787)	(6,402)
Fuel delivered to customers and related equipment	(2,927)	93	(3,633)	(6,089)
Total	\$ (5,832)	\$ (127)	\$ (10,327)	\$ (14,302)

Net revenue, cost of revenue, gross profit/(loss) and gross margin/(loss) for the three and six months ended June 30, 2024 and 2023 were as follows (in thousands):

	Three months ended June 30,				Six months ended June 30,			
	Net Revenue	Cost of Revenue	Gross Profit/(Loss)	Gross Margin	Net Revenue	Cost of Revenue	Gross Profit/(Loss)	Gross Margin/(Loss)
For the period ended June 30, 2024:								
Sales of equipment, related infrastructure and other	\$ 76,788	\$ 129,911	\$ (53,123)	(69.2)%	\$ 145,083	\$ 265,036	\$ (119,953)	(82.7)%
Services performed on fuel cell systems and related infrastructure	13,034	13,730	(696)	(5.3)%	26,057	26,687	(630)	(2.4)%
Provision for loss contracts related to service	—	16,484	(16,484)	N/A	—	32,229	(32,229)	N/A
Power purchase agreements	19,674	54,312	(34,638)	(176.1)%	37,978	109,540	(71,562)	(188.4)%
Fuel delivered to customers and related equipment	29,887	58,317	(28,430)	(95.1)%	48,173	116,890	(68,717)	(142.6)%
Other	3,967	1,851	2,116	53.3 %	6,323	3,562	2,761	43.7 %
Total	\$ 143,350	\$ 274,605	\$ (131,255)	(91.6)%	\$ 263,614	\$ 553,944	\$ (290,330)	(110.1)%
For the period ended June 30, 2023:								
Sales of equipment, related infrastructure and other	\$ 216,286	\$ 187,408	\$ 28,878	13.4 %	\$ 398,380	\$ 345,728	\$ 52,652	13.2 %
Services performed on fuel cell systems and related infrastructure	8,701	23,449	(14,748)	(169.5)%	17,798	35,670	(17,872)	(100.4)%
Provision for loss contracts related to service	—	7,331	(7,331)	N/A	—	14,220	(14,220)	N/A
Power purchase agreements	16,130	53,976	(37,846)	(234.6)%	24,067	100,792	(76,725)	(318.8)%
Fuel delivered to customers and related equipment	17,878	64,450	(46,572)	(260.5)%	28,020	118,951	(90,931)	(324.5)%
Other	1,187	1,711	(524)	(44.1)%	2,203	2,646	(443)	(20.1)%
Total	\$ 260,182	\$ 338,325	\$ (78,143)	(30.0)%	\$ 470,468	\$ 618,007	\$ (147,539)	(31.4)%

Net Revenue

Revenue – sales of equipment, related infrastructure and other: Revenue from sales of equipment, related infrastructure and other represents sales of our GenDrive units, GenSure stationary backup power units, cryogenic stationary and on road storage, hydrogen liquefaction systems, electrolyzers and hydrogen fueling infrastructure referred to at the site level as hydrogen installations. Revenue from sales of equipment, related infrastructure and other for the three months ended June 30, 2024 decreased \$139.5 million, or 64.5%, to \$76.8 million from \$216.3 million for the three months ended June 30, 2023. The decrease in revenue from sales of hydrogen infrastructure of \$45.4 million was due to five hydrogen site installations for the three months ended June 30, 2024 compared to 17 for the three months ended June 30, 2023. Additionally, revenue from sales of cryogenic storage equipment and liquefiers decreased \$38.7 million for the three months ended June 30, 2024 primarily due to fewer projects and a slower rate of progress on existing projects as they near completion compared to the three months ended June 30, 2023. The decrease in revenue related to sales of fuel cell systems of \$59.0 million was due primarily to a decrease in volume of GenDrive units sold, with 725 units sold for the three months ended June 30, 2024 compared to 2,680 units sold for the three months ended June 30, 2023. Additionally, there was a decrease in revenue of \$4.4 million related to decreased sales of engineered equipment from the Frames acquisition, for which sales are not expected to continue beyond current commitments. Partially offsetting these decreases, revenue from sales of electrolyzers increased \$8.1 million, primarily due to a large-scale electrolyzer project with revenue recognized over time during the three months ended June 30, 2024.

Revenue from sales of equipment, related infrastructure and other for the six months ended June 30, 2024 decreased \$253.3 million, or 63.6%, to \$145.1 million from \$398.4 million for the six months ended June 30, 2023. The revenue related to sales of electrolyzers decreased \$30.6 million, primarily due to a decrease in 1MW electrolyzer stack sales during the six months ended June 30, 2024 compared to the six months ended June 30, 2023. The decrease in sales of hydrogen infrastructure revenue of \$82.0 million was due to a decrease in volume with eight hydrogen site installations for the six months ended June 30, 2024 compared to 31 for the six months ended June 30, 2023. Additionally, revenue from sales of cryogenic storage equipment and liquefiers decreased \$63.9 million for the six months ended June 30, 2024 primarily due to fewer projects and a slower rate of progress on existing projects as they near completion compared to the six months ended June 30, 2023. The decrease in revenue related to sales of fuel cell systems of \$68.9 million was primarily due to a decrease in volume of GenDrive units sold, with 2,023 units sold for the six months ended June 30, 2024 compared to 3,715 units sold for the six months ended June 30, 2023. Additionally, there was a decrease in revenue of \$8.0 million related to decreased sales of engineered equipment from the Frames acquisition, for which sales are not expected to continue beyond current commitments.

Revenue – services performed on fuel cell systems and related infrastructure. Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. Revenue from services performed on fuel cell systems and related infrastructure for the three months ended June 30, 2024 increased \$4.3 million, or 49.8%, to \$13.0 million from \$8.7 million for the three months ended June 30, 2023. The increase in revenue from services performed on fuel cell systems and related infrastructure was primarily related to the increase in number of units in service, with the number of GenDrive units under maintenance contracts during the three months ended June 30, 2024 of 21,940 compared to 20,019 for the three months ended June 30, 2023, coupled with an increase in service rates negotiated with certain customers.

Revenue from services performed on fuel cell systems and related infrastructure for the six months ended June 30, 2024 increased \$8.3 million, or 46.4%, to \$26.1 million from \$17.8 million for the six months ended June 30, 2023. The increase in revenue from services performed on fuel cell systems and related infrastructure was primarily related to the increase in number of units in service during the six months ended June 30, 2024 compared to the six months ended June 30, 2023, as discussed above, coupled with an increase in service rates negotiated with certain customers.

Revenue – power purchase agreements. Revenue from Power Purchase Agreements (“PPAs”) represents payments received from customers for power generated through the provision of equipment and service. Revenue from PPAs for the three months ended June 30, 2024 increased \$3.5 million, or 22.0%, to \$19.7 million from \$16.1 million for the three months ended June 30, 2023. The increase in revenue was a result of an increase in the number of units and customer sites party to these agreements. There were 31,850 GenDrive units under PPA arrangements during the three months ended June 30, 2024 compared to 30,702 during the three months ended June 30, 2023. In addition, there were 146 hydrogen sites under PPA arrangements during the three months ended June 30, 2024 compared to 129 during the three months ended June 30, 2023. Furthermore, both pricing rates and mix of units to new customer sites were favorable in the second quarter of 2024 compared to the second quarter of 2023. Partially offsetting the increase in revenue was an increase in the provision for common stock warrants recorded as a reduction of revenue, which increased to \$1.7 million for the three months ended June 30, 2024 compared to a negative provision of \$0.8 million for the three months ended June 30, 2023.

Revenue from PPAs for the six months ended June 30, 2024 increased \$13.9 million, or 57.8%, to \$38.0 million from \$24.1 million for the six months ended June 30, 2023. The increase in revenue was a result of an increase in the number of units and customer sites party to these agreements, as discussed above, as well as more favorable pricing rates and mix of units to new customer sites during the first half of 2024 compared to the first half of 2023. Finally, there was a decrease in the provision for common stock warrants recorded as a reduction of revenue, which decreased to \$2.8 million for the six months ended June 30, 2024 compared to \$6.4 million for the six months ended June 30, 2023.

Revenue – fuel delivered to customers and related equipment. Revenue associated with fuel and related equipment delivered to customers represents the sale of hydrogen that has been purchased by the Company from a third party or generated at our hydrogen production plant. Revenue associated with fuel delivered to customers for the three months

ended June 30, 2024 increased \$12.0 million, or 67.2%, to \$29.9 million from \$17.9 million for the three months ended June 30, 2023. The increase in revenue was primarily due to an increase in the number of sites with fuel contracts, with 257 sites receiving fuel delivery as of June 30, 2024 compared to 229 sites as of June 30, 2023. Furthermore, favorable fuel rates were negotiated with certain customers in the second quarter of 2024. Partially offsetting the increase in revenue was an increase in the provision for common stock warrants recorded as a reduction of revenue, which increased to \$2.9 million for the three months ended June 30, 2024 compared to a negative provision of \$0.1 million for the three months ended June 30, 2023.

Revenue associated with fuel delivered to customers for the six months ended June 30, 2024 increased \$20.2 million, or 71.9%, to \$48.2 million from \$28.0 million for the six months ended June 30, 2023. The increase in revenue was primarily due to an increase in the number of sites with fuel contracts. Furthermore, favorable fuel rates were negotiated with certain customers in the first half of 2024. Finally, there was a decrease in the provision for common stock warrants recorded as a reduction of revenue, which decreased to \$3.6 million for the six months ended June 30, 2024 compared to \$6.1 million for the six months ended June 30, 2023.

Cost of Revenue

Cost of revenue – sales of equipment, related infrastructure and other. Cost of revenue from sales of equipment, related infrastructure and other includes direct materials, labor costs, and allocated overhead costs related to the manufacture of our fuel cells such as GenDrive units and GenSure stationary back-up power units, cryogenic stationary and on road storage, and electrolyzers, as well as hydrogen fueling infrastructure referred to at the site level as hydrogen installations. Cost of revenue from sales of equipment, related infrastructure and other for the three months ended June 30, 2024 decreased \$57.5 million, or 30.7%, to \$129.9 million from \$187.4 million for the three months ended June 30, 2023. The cost of revenue related to sales of hydrogen infrastructure decreased \$24.2 million due to the decrease in the number of hydrogen site installations, with five hydrogen site installations for the three months ended June 30, 2024 compared to 17 for the three months ended June 30, 2023. The decrease in cost of revenue related to sales of cryogenic storage equipment and liquefiers of \$29.6 million for the three months ended June 30, 2024 is primarily due to fewer projects and a slower rate of progress on existing projects as they near completion compared to the three months ended June 30, 2023. Cost of revenue related to sales of fuel cell systems decreased by \$25.6 million primarily due to a decrease in volume of GenDrive units sold, with 725 units sold for the three months ended June 30, 2024 compared to 2,680 units sold for the three months ended June 30, 2023. Additionally, there was a decrease in cost of revenue of \$3.7 million related to a decrease in sales of engineered equipment from the Frames acquisition, for which sales are not expected to continue beyond current commitments. Partially offsetting these decreases was an increase in cost of revenue related to sales of electrolyzer stacks and systems of \$25.6 million, which was primarily due to a large-scale electrolyzer project with revenue recognized over time during the three months ended June 30, 2024. Gross loss generated from sales of equipment, related infrastructure and other was (69.2%) for the three months ended June 30, 2024 compared to a gross margin of 13.4% for the three months ended June 30, 2023. The decrease from gross margin to gross loss was primarily due to customer mix, lower margins on new product offerings, inventory valuation adjustments and decline in volume which impacted leveraging of labor and overhead in the second quarter of 2024.

Cost of revenue from sales of equipment, related infrastructure and other for the six months ended June 30, 2024 decreased \$80.7 million, or 23.3%, to \$265.0 million from \$345.7 million for the six months ended June 30, 2023. The cost of revenue related to sales of hydrogen infrastructure decreased \$42.1 million due to the decrease in the number of hydrogen site installations, with eight hydrogen site installations for the six months ended June 30, 2024 compared to 31 for the six months ended June 30, 2023. The decrease in cost of revenue related to sales of cryogenic storage equipment and liquefiers of \$43.2 million for the six months ended June 30, 2024 is primarily due to fewer projects and a slower rate of progress on existing projects as they near completion compared to the six months ended June 30, 2023. Cost of revenue related to sales of fuel cell systems decreased \$0.6 million primarily due to a decrease in the volume of GenDrive units sold for the six months ended June 30, 2024 compared to the six months ended June 30, 2023, partially offset by an increase in inventory valuation adjustments and under-absorption of labor and overhead. Additionally, there was a decrease in cost of revenue of \$5.6 million related to a decrease in sales of engineered equipment from the Frames acquisition, for which sales are not expected to continue beyond current commitments. Partially offsetting these decreases was an increase in cost of revenue related to sales of electrolyzer stacks and systems of \$10.8 million, primarily due to a large-scale

electrolyzer project with revenue recognized over time during the six months ended June 30, 2024. Gross loss generated from sales of equipment, related infrastructure and other was (82.7%) for the six months ended June 30, 2024 compared to a gross margin of 13.2% for the six months ended June 30, 2023. The decrease from gross margin to gross loss was primarily due to customer mix, lower margins on new product offerings, inventory valuation adjustments and decline in volume which impacted leveraging of labor and overhead in the first half of 2024.

Cost of revenue – services performed on fuel cell systems and related infrastructure. Cost of revenue from services performed on fuel cell systems and related infrastructure includes the labor, material costs and allocated overhead costs incurred for our product service and hydrogen site maintenance contracts and spare parts. Cost of revenue from services performed on fuel cell systems and related infrastructure for the three months ended June 30, 2024 decreased \$9.7 million, or 41.4%, to \$13.7 million from \$23.4 million for the three months ended June 30, 2023. The decrease in cost of revenue was primarily due to an increase in the release of the loss accrual. Gross loss decreased to (5.3%) for the three months ended June 30, 2024 compared to gross loss of (169.5%) for the three months ended June 30, 2023. The decrease in gross loss was primarily due to an increase in negotiated contract rates discussed above, as well as an increase in the release of the loss accrual during the three months ended June 30, 2024.

Cost of revenue from services performed on fuel cell systems and related infrastructure for the six months ended June 30, 2024 decreased \$9.0 million, or 25.2%, to \$26.7 million from \$35.7 million for the six months ended June 30, 2023. The decrease in cost of revenue was primarily due to an increase in the release of the loss accrual. Gross loss decreased to (2.4%) for the six months ended June 30, 2024 compared to gross loss of (100.4%) for the six months ended June 30, 2023. The decrease in gross loss was primarily due to an increase in negotiated contract rates discussed above, as well as an increase in the release of the loss accrual during the six months ended June 30, 2024.

Cost of revenue – provision for loss contracts related to service. The Company also recorded a provision for loss contracts related to service of \$16.5 million for the three months ended June 30, 2024 compared to \$7.3 million for the three months ended June 30, 2023. The Company increased the provision due to continued cost and inflationary increases of labor, parts and related overhead coupled with the timing of the remaining period of service required, partially offset by an increase in negotiated contract rates with certain customers. Accordingly, the Company increased its estimated projected costs to service fuel cell systems and related infrastructure.

The Company recorded a provision for loss contracts related to service of \$32.2 million for the six months ended June 30, 2024 compared to \$14.2 million for the six months ended June 30, 2023. The Company increased the provision due to continued cost and inflationary increases of labor, parts and related overhead coupled with the timing of the remaining period of service required, partially offset by an increase in negotiated contract rates with certain customers. Accordingly, the Company increased its estimated projected costs to service fuel cell systems and related infrastructure.

Cost of revenue – power purchase agreements. Cost of revenue from PPAs includes depreciation of assets utilized and service costs to fulfill PPA obligations and interest costs associated with certain financial institutions for leased equipment. Cost of revenue from PPAs for the three months ended June 30, 2024 increased \$0.3 million, or 0.6%, to \$54.3 million from \$54.0 million for the three months ended June 30, 2023. The increase in cost was primarily a result of an increase in units and sites under PPA contracts, partially offset by a decrease in scrap events during the three months ended June 30, 2024. There were 31,850 GenDrive units under PPA arrangements during the three months ended June 30, 2024 compared to 30,702 during the three months ended June 30, 2023. In addition, there were 146 hydrogen sites under PPA arrangements during the three months ended June 30, 2024 compared to 129 during the three months ended June 30, 2023. Gross loss decreased to (176.1%) for the three months ended June 30, 2024 compared to (234.6%) for the three months ended June 30, 2023. The decrease in gross loss was primarily due to improved pricing and mix of units and a reduction of scrap events, partially offset by an increase in provision for common stock warrants.

Cost of revenue from PPAs for the six months ended June 30, 2024 increased \$8.7 million, or 8.7%, to \$109.5 million from \$100.8 million for the six months ended June 30, 2023. The increase in cost was primarily a result of an increase in units and sites under PPA contracts, partially offset by a decrease in scrap events during the three months ended June 30, 2024. Gross loss decreased to (188.4%) for the six months ended June 30, 2024 compared to (318.8%) for the six

months ended June 30, 2023. The decrease in gross loss was primarily due to improved pricing and mix of units, a reduction of scrap events and a decrease in provision for common stock warrants.

Cost of revenue – fuel delivered to customers and related equipment. Cost of revenue from fuel delivered to customers and related equipment represents the purchase of hydrogen from suppliers and internally produced hydrogen that is ultimately sold to customers. Cost of revenue from fuel delivered to customers for the three months ended June 30, 2024 decreased \$6.1 million, or 9.5%, to \$58.3 million from \$64.5 million for the three months ended June 30, 2023. The decrease was primarily due to lower costs of purchased fuel, an increase in fuel internally produced by the Company, which is inherently lower in cost, as well as a recognition of the clean hydrogen production tax credit (“PTC”). Gross loss decreased to (95.1%) during the three months ended June 30, 2024 compared to (260.5%) during the three months ended June 30, 2023. The decrease in gross loss was primarily due to favorable fuel rates negotiated with certain customers, lower costs of purchased fuel, an increase in fuel internally produced by the Company and recognition of the PTC.

Cost of revenue from fuel delivered to customers for the six months ended June 30, 2024 decreased \$2.1 million, or 1.7%, to \$116.9 million from \$119.0 million for the six months ended June 30, 2023. The decrease was primarily due to lower costs of purchased fuel, an increase in fuel internally produced by the Company, which is inherently lower in cost, as well as a recognition of the PTC. Gross loss decreased to (142.6%) during the six months ended June 30, 2024 compared to (324.5%) during the six months ended June 30, 2023. The decrease in gross loss was primarily due to favorable fuel rates negotiated with certain customers, lower costs of purchased fuel, an increase in fuel internally produced by the Company and recognition of the PTC.

Expenses

Research and development expense. Research and development expenses include: materials to build development and prototype units, cash and non-cash compensation and benefits for the engineering and related staff, expenses for contract engineers, fees paid to consultants for services provided, materials and supplies consumed, facility related costs such as computer and network services, and other general overhead costs associated with our research and development activities. Research and development expense for the three months ended June 30, 2024 decreased \$10.3 million, or 35.2%, to \$18.9 million from \$29.3 million for the three months ended June 30, 2023. The decrease was primarily related to headcount reductions.

Research and development expense for the six months ended June 30, 2024 decreased \$11.5 million, or 20.6%, to \$44.2 million from \$55.8 million for the six months ended June 30, 2023. The decrease was primarily related to a decrease in component materials as well as headcount reductions.

Selling, general and administrative expenses. Selling, general and administrative expenses include cash and non-cash compensation, benefits, amortization of intangible assets and related costs in support of our general corporate functions, including general management, finance and accounting, human resources, selling and marketing, information technology and legal services. Selling, general and administrative expenses for the three months ended June 30, 2024 decreased \$16.0 million, or 15.8%, to \$85.1 million from \$101.2 million for the three months ended June 30, 2023. The decrease was primarily due a decrease in stock compensation, as certain performance awards nearing the end of their vesting period.

Selling, general and administrative expenses for the six months ended June 30, 2024 decreased \$42.1 million, or 20.5%, to \$163.1 million from \$205.2 million for the six months ended June 30, 2023. The decrease was primarily due to a decrease in stock compensation expense, of which \$17.2 million is related to stock compensation forfeitures resulting from the Restructuring Plan announced in February 2024, as well as certain performance awards nearing the end of their vesting period.

Restructuring. Expenses related to the Restructuring Plan for the three months ended June 30, 2024 was \$1.6 million. The increase was due to severance and benefits related to the Restructuring Plan the Company announced in February 2024.

Expenses related to the Restructuring Plan for the six months ended June 30, 2024 was \$7.6 million. The increase was due to severance and benefits related to the Restructuring Plan the Company announced in February 2024.

Impairment. Impairment for the three months ended June 30, 2024 decreased \$6.0 million, or 60.6%, to \$3.9 million from \$10.0 million for the three months ended June 30, 2023. The decrease was primarily related to the Company recording a lower impairment charge on long-lived assets during the three months ended June 30, 2024, partially offset by a \$3.0 million impairment charge to a non-marketable equity security.

Impairment for the six months ended June 30, 2024 decreased \$6.8 million, or 61.9%, to \$4.2 million from \$11.1 million for the six months ended June 30, 2023. The decrease was primarily related to the Company recording a lower impairment charge on long-lived assets during the six months ended June 30, 2024, partially offset by a \$3.0 million impairment charge to a non-marketable equity security.

Change in fair value of contingent consideration. The change in fair value of contingent consideration is related to earnouts for the Joule Processing LLC (“Joule”) and Frames Holding B.V. (“Frames”) acquisitions. The change in fair value of contingent consideration for the three months ended June 30, 2024 and 2023 was \$3.8 million and \$15.3 million, respectively. The decrease was primarily due to the Giner ELX, Inc. (“Giner”) and Universal Hydrogen Group Inc. (“UHG”) earn-outs that were still outstanding during the three months ended June 30, 2023 but subsequently settled during the three months ended June 30, 2024. In addition, the fair value of contingent consideration for Joule’s earn-out increased significantly during the three months ended June 30, 2023 due to increased probabilities of achievement.

The change in fair value of contingent consideration for the six months ended June 30, 2024 and 2023 was (\$5.4) million and \$24.1 million, respectively. The decrease was primarily due to changes in assumptions related to future earn-out payments due to renegotiated agreements during the first half of 2024 as well as the settlement of the UHG and Giner earn-outs.

Interest income. Interest income primarily consists of income generated by our investment holdings, restricted cash escrow accounts, and money market accounts. Interest income for the three months ended June 30, 2024 decreased \$8.5 million compared to the three months ended June 30, 2023. The decrease during the three months ended June 30, 2024 compared to June 30, 2023 was primarily due to the maturities and sale of the Company’s available-for-sale portfolio of higher-yielding U.S. treasury securities during 2023.

Interest income for the six months ended June 30, 2024 decreased \$16.9 million compared to the six months ended June 30, 2023. The decrease during the six months ended June 30, 2024 compared to June 30, 2023 was primarily due to the maturities and sale of the Company’s available-for-sale portfolio of higher-yielding U.S. treasury securities during 2023.

Interest expense. Interest expense consists of interest expense related to our long-term debt, convertible senior notes, obligations under finance leases and our finance obligations. Interest expense for the three months ended June 30, 2024 decreased \$1.8 million compared to the three months ended June 30, 2023 primarily due to an increase in capitalized interest during the second quarter of 2024.

Interest expense for the six months ended June 30, 2024 decreased \$1.1 million compared to the six months ended June 30, 2023 primarily due to an increase in capitalized interest during the second quarter of 2024.

Other expense, net. Other expense, net primarily consists of gains and losses related to energy contracts and foreign currency. Other expense, net for the three months ended June 30, 2024 increased \$4.0 million compared to the three months ended June 30, 2023. The increase was primarily due losses related to energy contracts.

Other expense, net for the six months ended June 30, 2024 increased \$6.2 million compared to the six months ended June 30, 2023. The increase was primarily due to foreign currency losses as well as losses related to energy contracts.

Change in fair value of equity securities. Change in fair value of equity securities consists of the changes in fair value for equity securities from the purchase date to the end of the period. The change in fair value of equity securities was \$0 for the three months ended June 30, 2024 compared to a gain of \$3.8 million for the three months ended June 30, 2023. The decrease in the change in fair value of equity securities is due to the Company selling its remaining equity securities during the fourth quarter of 2023.

The change in fair value of equity securities was \$0 for the six months ended June 30, 2024 compared to a gain of \$8.9 million for the six months ended June 30, 2023. The decrease in the change in fair value of equity securities is due to the Company selling its remaining equity securities during the fourth quarter of 2023.

Loss on equity method investments. Loss on equity method investments consists of our interest in HyVia, which is our 50/50 joint venture with Renault, AccionaPlug, which is our 50/50 joint venture with Acciona, SK Plug Hyverse, which is our 49/51 joint venture with SK E&S, and Clean H2 Infra Fund. For the three months ended June 30, 2024, the Company recorded a loss of \$7.2 million on equity method investments compared to a loss of \$7.6 million for the three months ended June 30, 2023. These losses are driven from the start-up activities for commercial and production operations of the aforementioned investments.

For the six months ended June 30, 2024, the Company recorded a loss of \$20.4 million on equity method investments compared to a loss of \$12.9 million for the six months ended June 30, 2023. These losses are driven from the start-up activities for commercial and production operations of the aforementioned investments.

Loss on extinguishment of convertible senior notes. Loss on extinguishment of convertible senior notes arises from the difference between the net carrying amount of the Company's Convertible Senior Notes and the fair value of the assets transferred to extinguish the Convertible Senior Notes. For the three months ended June 30, 2024 and June 30, 2023, the Company did not record a loss on extinguishment of convertible senior notes.

For the six months ended June 30, 2024, the Company recorded a loss of \$14.0 million on extinguishment of convertible senior notes. These losses are driven from the exchange of \$138.8 million in aggregate principal amount of the Company's 3.50% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes during the first quarter of 2024.

Income Taxes

The Company recorded \$0.4 million of income tax benefit and \$0.9 million of income tax benefit for the three months ended June 30, 2024 and 2023, respectively. The Company recorded \$0.2 million of income tax benefit and \$2.2 million of income tax benefit for the six months ended June 30, 2024 and 2023, respectively. The income tax benefit for the six months ended June 30, 2024 was due to an incremental change to the valuation allowance recorded in foreign jurisdictions. The Company has not changed its overall conclusion with respect to the need for a valuation allowance against its domestic net deferred tax assets, which remain fully reserved, and its valuation allowances recorded in foreign jurisdictions.

The domestic net deferred tax asset generated from the Company's net operating loss has been offset by a full valuation allowance because it is more likely than not that the tax benefits of the net operating loss carryforward will not be realized. The Company recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as a component of income tax expense.

The Organization for Economic Co-operation and Development Inclusive Framework on Base Erosion and Profit Shifting has proposed a global minimum corporate tax rate of 15% on multi-national corporations, commonly referred to as the Pillar Two rules that has been agreed upon in principle by over 140 countries. Numerous foreign countries have enacted legislation to implement the Pillar Two rules, effective beginning January 1, 2024, or are expected to enact similar legislation. As of June 30, 2024, the Company did not meet the consolidated revenue threshold and is not subject to the GloBE Rules under Pillar Two. The Company will continue to monitor the implementation of rules in the jurisdictions in which it operates.

Liquidity and Capital Resources

As of June 30, 2024 and December 31, 2023, the Company had \$62.4 million and \$135.0 million, respectively, of cash and cash equivalents and \$956.5 million of restricted cash.

The Company has continued to experience negative cash flows from operations and net losses. The Company incurred net losses of \$558.2 million and \$443.0 million for the six months ended June 30, 2024 and 2023, respectively, and had an accumulated deficit of \$5.0 billion as of June 30, 2024.

A summary of our consolidated sources and uses of cash, cash equivalents and restricted cash was as follows (in thousands):

	Six months ended	
	June 30, 2024	June 30, 2023
Net cash (used in) provided by:		
Operating activities	\$ (422,466)	\$ (625,011)
Investing activities	(268,658)	605,487
Financing activities	526,751	25,644
	<u>\$ (164,373)</u>	<u>\$ 6,120</u>

Operating Activities

The net cash used in operating activities for the six months ended June 30, 2024 and 2023 was \$422.5 million and \$625.0 million, respectively. This decrease in net cash used in operating activities was primarily due to a larger decrease in accounts receivable and a smaller increase in inventory, partially offset by an increase in net loss and an increase in inventory valuation adjustments. The Company's working capital was \$862.8 million as of June 30, 2024, which included unrestricted cash and cash equivalents of \$62.4 million.

Investing Activities

The net cash (used in)/provided by investing activities for the six months ended June 30, 2024 and 2023 was (\$268.7) million and \$605.5 million, respectively. The change from cash inflow to cash outflow from investing activities is primarily due to a decrease in proceeds from maturities of available-for-sale securities during the six months ended June 30, 2024 as the Company no longer holds available-for-sale securities.

Financing Activities

The net cash provided by financing activities for the six months ended June 30, 2024 and 2023 was \$526.8 million and \$25.6 million, respectively. The increase in cash provided by financing activities was primarily driven by proceeds from the At Market Issuance Sales Agreement during the six months ended June 30, 2024, partially offset by a decrease in proceeds from finance obligations.

The Company's working capital was \$862.8 million as of June 30, 2024, which included unrestricted cash and cash equivalents of \$62.4 million and restricted cash of \$956.5 million. On January 17, 2024, the Company entered into the At Market Issuance Sales Agreement (the "Original ATM Agreement") with B. Riley Securities, Inc. ("B. Riley"), pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company's common stock, having an aggregate offering price of up to \$1.0 billion. As of February 23, 2024, the Company had \$697.9 million remaining authorized for issuance under the Original ATM Agreement. On February 23, 2024, the Company and B. Riley entered into Amendment No. 1 to the Original ATM Agreement (the "Amendment" and, together with the Original ATM Agreement, the "ATM Agreement") to increase the aggregate offering price of shares of the Company's common stock available for future issuance under the Original ATM Agreement to \$1.0 billion. Under the ATM Agreement, for a period of 18 months, the Company has the right at its sole discretion to direct B. Riley to act on a

principal basis and purchase directly from the Company up to \$11.0 million of shares of its common stock on any trading day (the “Maximum Commitment Advance Purchase Amount”) and up to \$55.0 million of shares in any calendar week (the “Maximum Commitment Advance Purchase Amount Cap”). On and after June 1, 2024, so long as the Company’s market capitalization is no less than \$1.0 billion, the Maximum Commitment Advance Purchase Amount will remain \$11.0 million and the Maximum Commitment Advance Purchase Amount Cap will remain \$55.0 million. If the Company’s market capitalization is less than \$1.0 billion on and after June 1, 2024, the Maximum Commitment Advance Purchase Amount will be decreased to \$10.0 million and the Maximum Commitment Advance Purchase Amount Cap will be decreased to \$30.0 million. Since January 17, 2024, the Company has sold 189,411,442 shares of common stock for gross proceeds of \$611.5 million. As of the date of filing of this Quarterly Report on Form 10-Q, the Company has a remaining \$690.6 million available under the ATM Agreement.

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$2.54 per share for net proceeds of \$191.0 million after deduction of the underwriting discount and related offering expenses in an underwritten public offering with Morgan Stanley & Co. LLC. The Company granted the underwriter a 30-day option to purchase up to an additional 11,811,023 shares of common stock at the public offering price, less the underwriting discount.

The Company believes that its working capital and cash position, together with its right to direct B. Riley to purchase shares directly from the Company under the ATM Agreement and its public offering of common stock completed in July 2024, will be sufficient to fund its on-going operations for a period of at least 12 months subsequent to the issuance of the accompanying unaudited interim condensed consolidated financial statements.

The Company’s significant obligations consisted of the following as of June 30, 2024:

- (i) Operating and finance leases totaling \$330.7 million and \$40.7 million, respectively, of which \$66.4 million and \$10.2 million, respectively, are due within the next 12 months. These leases are primarily related to sale/leaseback agreements entered into with various financial institutions to facilitate the Company’s commercial transactions with key customers. See Note 17, “Operating and Finance Lease Liabilities”, for more details.
- (ii) Finance obligations totaling \$330.7 million, of which approximately \$85.6 million is due within the next 12 months. Finance obligations consist primarily of debt associated with the sale of future revenues and failed sale/leaseback transactions. See Note 18, “Finance Obligations”, for more details.
- (iii) Convertible senior notes totaling \$208.6 million, none of which is due within the next twelve months. See Note 10, “Convertible Senior Notes”, for more details.
- (iv) Capital commitments totaling \$23.7 million related to the Company’s equity method investments, of which all \$23.7 million is due within the next 12 months. See Note 16, “Investments”, for more details.
- (v) Future payments under non-cancelable unconditional purchase obligations with a remaining term in excess of one year totaling \$45.9 million, of which \$31.2 million is due within the next 12 months. See Note 19, “Commitments and Contingencies”, for more details.
- (vi) Contingent consideration with an estimated fair value of approximately \$90.6 million, of which \$37.9 million is due within the next 12 months. See Note 15, “Fair Value Measurements”, for more details.

Public and Private Offerings of Equity and Debt

At Market Issuance Sales Agreement

[Table of Contents](#)

As described above, on January 17, 2024, the Company entered into an At Market Issuance Sales Agreement with B. Riley, pursuant to which the Company may, from time to time, offer and sell through or to B. Riley, as sales agent or principal, shares of the Company's common stock, having an aggregate offering price of up to \$1.0 billion. As of February 23, 2024, the Company had \$697.9 million remaining authorized for issuance under the ATM Agreement. On February 23, 2024, the Company amended the ATM Agreement to increase the amount of shares of the Company's common stock available for sale under the ATM Agreement to \$1.0 billion. During the three months ended June 30, 2024, the Company sold 96,812,695 shares of common stock at a weighted-average sales price of \$2.80 per share for gross proceeds of \$271.5 million with related issuance costs of \$4.8 million. During the six months ended June 30, 2024, the Company sold 176,365,870 shares of common stock at a weighted-average sales price of \$3.29 per share for gross proceeds of \$580.8 million with related issuance costs of \$8.7 million.

Public Offering of Common Stock

On July 22, 2024, the Company sold 78,740,157 shares of its common stock at a public offering price of \$2.54 per share for net proceeds of \$191.0 million after deduction of the underwriting discount and related offering expenses in an underwritten public offering with Morgan Stanley & Co. LLC. The Company granted the underwriter a 30-day option to purchase up to an additional 11,811,023 shares of common stock at the public offering price, less the underwriting discount.

Secured Debt

During the second quarter of 2024, the Company began repaying principal and interest on a \$2.0 million allowance for tenant work related to its manufacturing facility in Slingerlands, NY. In accordance with ASC 842, *Leases* ("ASC 842"), the allowance is treated as a freestanding financial instrument separate from the facility lease and is accounted for as long-term debt. Plug is required to pay \$249 thousand per year during the term which began coinciding with the facility lease commencement date on January 1, 2023. The terms of the allowance state that interest will accrue at 4.5% per annum over a 10 year period. The debt is scheduled to mature in 2032. During the three months ended June 30, 2024 and 2023 the Company repaid \$42 thousand and \$40 thousand of principal related to this outstanding debt. During the six months ended June 30, 2024 and 2023 the Company repaid \$82 thousand and \$80 thousand of principal related to this outstanding debt. The outstanding principal and carrying value of the debt was \$1.8 million as of June 30, 2024.

In June 2020, the Company acquired debt as part of its acquisition of United Hydrogen Group Inc. During the three months ended June 30, 2024 and 2023, the Company repaid \$0.3 million and \$5.1 million of principal related to this outstanding debt. During the six months ended June 30, 2024 and 2023, the Company repaid \$0.6 million and \$5.4 million of principal related to this outstanding debt. The outstanding carrying value of the debt was \$3.7 million as of June 30, 2024. The remaining outstanding principal on the debt was \$4.9 million and the unamortized debt discount was \$1.2 million, bearing varying interest rates ranging from 7.3% to 7.6%. The debt is scheduled to mature in 2026. As of June 30, 2024, the principal balance is due at each of the following dates as follows (in thousands):

December 31, 2024	2,757
December 31, 2025	1,200
December 31, 2026	900
Total outstanding principal	\$ 4,857

7.00% Convertible Senior Notes

On March 20, 2024, the Company entered into separate, privately negotiated exchange agreements with certain holders of the Company's outstanding 3.75% Convertible Senior Notes pursuant to which the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes, and accrued and unpaid interest of \$1.6 million on such notes to, but excluding, March 20, 2024, for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes due 2026, in each case, pursuant to the exemption from registration provided by Section 4(a)(2) under the Securities Act of 1933, as amended (the "Securities Act"). Following the exchange,

approximately \$58.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged.

This transaction was accounted for as an extinguishment of debt. As a result, the Company recorded a loss on extinguishment of debt of \$14.0 million in the unaudited interim condensed consolidated statement of operations during the first quarter of 2024. Loss on extinguishment of debt arises from the difference between the net carrying amount of the Company's debt and the fair value of the assets transferred to extinguish the debt.

The 7.00% Convertible Senior Notes are the Company's senior, unsecured obligations and are governed by the terms of an Indenture (the "Indenture"), dated as of March 20, 2024, entered into between the Company and Wilmington Trust, National Association, as trustee. The 7.00% Convertible Senior Notes bear cash interest at the rate of 7.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2024, to holders of record at the close of business on the preceding May 15 and November 15, respectively. The 7.00% Convertible Senior Notes mature on June 1, 2026, unless earlier converted or redeemed or repurchased by the Company.

The conversion rate for the 7.00% Convertible Senior Notes is initially 235.4049 shares of the Company's common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, which is equivalent to an initial conversion price of approximately \$4.25 per share of common stock, which represents a premium of approximately 20% over the last reported sale price of Plug's common stock on the Nasdaq Capital Market on March 12, 2024. The conversion rate and conversion price are subject to customary adjustments upon the occurrence of certain events. Prior to the close of business on the business day immediately preceding December 1, 2025, the 7.00% Convertible Senior Notes will be convertible at the option of the holders of the 7.00% Convertible Senior Notes only upon the satisfaction of specified conditions and during certain periods. On or after December 1, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity date, the 7.00% Convertible Senior Notes will be convertible at the option of the holders of the 7.00% Convertible Senior Notes at any time regardless of these conditions. Conversions of the 7.00% Convertible Senior Notes will be settled in cash, shares of the Company's common stock, or a combination thereof, at the Company's election.

Subject to certain exceptions and subject to certain conditions, holders of the 7.00% Convertible Senior Notes may require the Company to repurchase their 7.00% Convertible Senior Notes upon the occurrence of a "Fundamental Change" (as defined in the Indenture) prior to maturity for cash at a repurchase price equal to 100% of the principal amount of the 7.00% Convertible Senior Notes to be repurchased plus accrued and unpaid interest, if any, to, but excluding, the repurchase date.

The 7.00% Convertible Senior Notes will be redeemable, in whole or in part, at the Company's option at any time on or after June 5, 2025, at a cash redemption price equal to the principal amount of the 7.00% Convertible Senior Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the then-applicable conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the three trading days immediately preceding the date the Company sends the related redemption notice, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company sends such redemption notice.

In certain circumstances, conversions of 7.00% Convertible Senior Notes in connection with "Make-Whole Fundamental Changes" (as defined in the Indenture) or conversions of 7.00% Convertible Senior Notes called for redemption may result in an increase to the conversion rate, provided that the conversion rate will not exceed 282.4859 shares of the Company's common stock per \$1,000 principal amount of 7.00% Convertible Senior Notes, subject to adjustment. In such circumstance, a maximum of 39,659,890 shares of common stock, subject to adjustment, may be issued upon conversion of the 7.00% Convertible Senior Notes. There were no conversions of the 7.00% Convertible Senior Notes during the three and six months ended June 30, 2024.

[Table of Contents](#)

The 7.00% Convertible Senior Notes consisted of the following (in thousands):

	June 30, 2024
Principal amounts:	
Principal	\$ 140,396
Unamortized debt premium, net of offering costs (1)	10,126
Net carrying amount	<u>\$ 150,522</u>

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 7.00% Convertible Senior Notes for the three and six months ended June 30, 2024 (in thousands, except for the effective interest rate):

	Three months ended June 30, 2024		Six months ended June 30, 2024	
Interest expense	\$	2,450	\$	2,746
Amortization of premium		(1,314)		(1,473)
Total	\$	1,136	\$	1,273
Effective interest rate		3.0%		3.0%

The estimated fair value of the 7.00% Convertible Senior Notes as of June 30, 2024 was approximately \$126.3 million. The fair value estimation was primarily based on a quoted price in an active market.

3.75% Convertible Senior Notes

On May 18, 2020, the Company issued \$200.0 million in aggregate principal amount of 3.75% Convertible Senior Notes due June 1, 2025 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act. On May 29, 2020, the Company issued an additional \$12.5 million in aggregate principal amount of 3.75% Convertible Senior Notes. On March 12, 2024, the Company exchanged \$138.8 million in aggregate principal amount of the 3.75% Convertible Senior Notes for \$140.4 million in aggregate principal amount of the Company's new 7.00% Convertible Senior Notes due 2026. Following the exchange, approximately \$58.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes remained outstanding with terms unchanged. There were no conversions of the 3.75% Convertible Senior Notes during the three and six months ended June 30, 2024 and 2023.

The 3.75% Convertible Senior Notes consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Principal amounts:		
Principal	\$ 58,462	\$ 197,278
Unamortized debt issuance costs (1)	(408)	(2,014)
Net carrying amount	<u>\$ 58,054</u>	<u>\$ 195,264</u>

(1) Included in the unaudited interim condensed consolidated balance sheets within convertible senior notes, net and amortized over the remaining life of the notes using the effective interest rate method.

[Table of Contents](#)

The following table summarizes the total interest expense and effective interest rate related to the 3.75% Convertible Senior Notes for the three and six months ended June 30, 2024 and 2023 (in thousands, except for the effective interest rate):

	Three months ended		Six months ended	
	June 30, 2024	June 30, 2023	June 30, 2024	June 30, 2023
Interest expense	\$ 548	\$ 1,849	\$ 2,238	\$ 3,698
Amortization of debt issuance costs	108	334	424	665
Total	\$ 656	\$ 2,183	\$ 2,662	\$ 4,363
Effective interest rate	4.5%	4.5%	4.5%	4.5%

The estimated fair value of the 3.75% Convertible Senior Notes as of June 30, 2024 was approximately \$54.5 million. The fair value estimation was primarily based on a quoted price in an active market.

Capped Call

In conjunction with the pricing of the 3.75% Convertible Senior Notes, the Company entered into privately negotiated capped call transactions (the “3.75% Notes Capped Call”) with certain counterparties at a price of \$16.2 million. The 3.75% Notes Capped Call covers, subject to anti-dilution adjustments, the aggregate number of shares of the Company’s common stock that underlie the initial 3.75% Convertible Senior Notes and is generally expected to reduce potential dilution to the Company’s common stock upon any conversion of the 3.75% Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the 3.75% Notes Capped Call is initially \$6.7560 per share, which represents a premium of approximately 60% over the last then-reported sale price of the Company’s common stock of \$4.11 per share on the date of the transaction and is subject to certain adjustments under the terms of the 3.75% Notes Capped Call. The 3.75% Notes Capped Call becomes exercisable if the conversion option is exercised.

The net cost incurred in connection with the 3.75% Notes Capped Call was recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets. The book value of the 3.75% Notes Capped Call is not remeasured.

5.5% Convertible Senior Notes and Common Stock Forward

In March 2018, the Company issued \$100.0 million in aggregate principal amount of the 5.5% Convertible Senior Notes due on March 15, 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act, which have been fully repaid. In connection with the issuance of the 5.5% Convertible Senior Notes, the Company entered into a forward stock purchase transaction (the “Common Stock Forward”), pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. On May 18, 2020, the Company amended and extended the maturity of the Common Stock Forward to June 1, 2025. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$27.5 million was recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets. The related shares were accounted for as a repurchase of common stock. The book value of the Common Stock Forward is not remeasured.

There were no shares of common stock that settled in connection with the Common Stock Forward during the three and six months ended June 30, 2024 and 2023.

Amazon Transaction Agreement in 2022

On August 24, 2022, the Company and Amazon entered into a Transaction Agreement (the “2022 Amazon Transaction Agreement”), under which the Company concurrently issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the “2022 Amazon Warrant”) to acquire up to 16,000,000 shares (the “2022 Amazon Warrant Shares”) of the Company’s common stock, subject to certain vesting events described below. The Company and Amazon entered into the 2022 Amazon Transaction Agreement in connection with a concurrent commercial arrangement under which Amazon agreed to purchase hydrogen fuel from the Company through August 24, 2029.

1,000,000 of the 2022 Amazon Warrant Shares vested immediately upon issuance of the 2022 Amazon Warrant. 15,000,000 of the 2022 Amazon Warrant Shares will vest in multiple tranches over the 7-year term of the 2022 Amazon Warrant based on payments made to the Company directly by Amazon or its affiliates, or indirectly through third parties, with 15,000,000 of the 2022 Amazon Warrant Shares fully vesting if Amazon-related payments of \$2.1 billion are made in the aggregate. The exercise price for the first 9,000,000 2022 Amazon Warrant Shares is \$22.9841 per share and the fair value on the grant date was \$20.36. The exercise price for the remaining 7,000,000 2022 Amazon Warrant Shares will be an amount per share equal to 90% of the 30-day volume weighted average share price of the Company’s common stock as of the final vesting event that results in full vesting of the first 9,000,000 2022 Amazon Warrant Shares. The 2022 Amazon Warrant is exercisable through August 24, 2029.

Upon the consummation of certain change of control transactions (as defined in the 2022 Amazon Warrant) prior to the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, the 2022 Amazon Warrant will automatically vest and become exercisable with respect to an additional number of 2022 Amazon Warrant Shares such that 60% of the aggregate 2022 Amazon Warrant Shares shall have vested. If a change of control transaction is consummated after the vesting of at least 60% of the aggregate 2022 Amazon Warrant Shares, then no acceleration of vesting will occur with respect to any of the unvested 2022 Amazon Warrant Shares as a result of the transaction. The exercise price and the 2022 Amazon Warrant Shares issuable upon exercise of the 2022 Amazon Warrant are subject to customary antidilution adjustments.

On August 24, 2022, 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 1 vested. The warrant fair value associated with the vested shares of tranche 1 of \$20.4 million was capitalized to contract assets based on the grant date fair value and is subsequently amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement. As of June 30, 2024 the balance of the contract asset related to tranche 1 was \$19.0 million which is recorded in contract assets in the Company’s unaudited interim condensed consolidated balance sheet. During the second quarter of 2023, all 1,000,000 of the 2022 Amazon Warrant Shares associated with tranche 2 vested. The warrant fair value associated with the vested shares of tranche 2 was \$20.4 million and was determined on the grant date of August 24, 2022. As of June 30, 2024 the balance of the contract asset related to tranche 2 was \$19.0 million. Tranche 3 will vest over the next \$1.0 billion of collections from Amazon and its affiliates. The grant date fair value of tranche 3 will also be amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement. As of June 30, 2024 the balance of the contract asset related to tranche 3 was \$1.5 million. Because the exercise price has yet to be determined, the fair value of tranche 4 will be remeasured at each reporting period end and amortized ratably as a reduction to revenue based on the Company’s estimate of revenue over the term of the agreement.

As of June 30, 2024 and December 31, 2023, 2,000,000 of the 2022 Amazon Warrant Shares had vested and the 2022 Amazon Warrant had not been exercised. During the three and six months ended June 30, 2024 and 2023, there were no exercises with respect to the 2022 Amazon Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the three months ended June 30, 2024 and 2023 was \$1.7 million and \$1.5 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2022 Amazon Warrant during the six months ended June 30, 2024 and 2023 was \$2.4 million and \$2.6 million, respectively.

The assumptions used to calculate the valuations of the 2022 Amazon Warrant as of August 24, 2022 and June 30, 2024 are as follows:

	Tranches 1-3 August 24, 2022	Tranche 4 June 30, 2024
Risk-free interest rate	3.15%	4.24%
Volatility	75.00%	90.00%
Expected average term (years)	7.00	1.15
Exercise price	\$22.98	\$2.10
Stock price	\$20.36	\$2.33

Amazon Transaction Agreement in 2017

On April 4, 2017, the Company and Amazon entered into a Transaction Agreement (the “2017 Amazon Transaction Agreement”), pursuant to which the Company agreed to issue to Amazon.com NV Investment Holdings LLC, a warrant (the “2017 Amazon Warrant”) to acquire up to 55,286,696 shares (the “2017 Amazon Warrant Shares”), subject to certain vesting events. The Company and Amazon entered into the 2017 Amazon Transaction Agreement in connection with existing commercial agreements between the Company and Amazon with respect to the deployment of the Company’s GenKey fuel cell technology at Amazon distribution centers. The vesting of the 2017 Amazon Warrant Shares was conditioned upon payments made by Amazon or its affiliates (directly or indirectly through third parties) pursuant to existing commercial agreements. On December 31, 2020, the Company waived the remaining vesting conditions under the 2017 Amazon Warrant, which resulted in the immediate vesting of all of the third tranche of the 2017 Amazon Warrant Shares.

As of June 30, 2024 and 2023, all 55,286,696 of the 2017 Amazon Warrant Shares had vested and the 2017 Amazon Warrant was exercised with respect to 34,917,912 shares of the Company’s common stock. During the three and six months ended June 30, 2024 and 2023, there were no exercises with respect to the 2017 Amazon Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2017 Amazon Warrant during the three months ended June 30, 2024 and 2023 was \$0.1 million and \$0.1 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the 2017 Amazon Warrant during the six months ended June 30, 2024 and 2023 was \$0.2 million and \$0.2 million, respectively.

Walmart Transaction Agreement

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the “Walmart Transaction Agreement”), pursuant to which the Company agreed to issue to Walmart a warrant (the “Walmart Warrant”) to acquire up to 55,286,696 shares of the Company’s common stock, subject to certain vesting events (the “Walmart Warrant Shares”). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company’s GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company’s fuel cell technology. The vesting of the warrant shares was conditioned upon payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The exercise price for the first and second tranches of Walmart Warrant Shares was \$2.1231 per share. After Walmart has made payments to the Company totaling \$200.0 million, the third tranche of 20,368,784 Walmart Warrant Shares will vest in eight installments of 2,546,098 Walmart Warrant Shares each time Walmart or its affiliates, directly or indirectly through third parties, make an aggregate of \$50.0 million in payments for goods and services to the Company, up to payments totaling \$400.0 million in the aggregate. The exercise price of the third tranche of the Walmart Warrant Shares is \$6.28 per share, which was determined pursuant to the terms of the Walmart Warrant as an amount equal to 90% of the 30-day volume weighted average share price of the Company’s common stock as of October 30, 2023, the final vesting date of the second tranche of the Walmart Warrant Shares. The Walmart Warrant is exercisable through July 20, 2027. The Walmart Warrant provides for net share settlement that, if elected by the holder, will reduce the number of

shares issued upon exercise to reflect net settlement of the exercise price. The Walmart Warrant provides for certain adjustments that may be made to the exercise price and the number of shares of common stock issuable upon exercise due to customary anti-dilution provisions based on future events. The Walmart Warrant is classified as an equity instrument. As of June 30, 2024, the balance of the contract asset related to the Walmart Warrant was \$5.4 million.

As of June 30, 2024 and December 31, 2023, 37,464,010 and 34,917,912 of the Walmart Warrant Shares had vested, respectively, and the Walmart Warrant was exercised with respect to 13,094,217 shares of the Company's common stock. During the three and six months ended June 30, 2024 and 2023, there were no exercises with respect to the Walmart Warrant. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended June 30, 2024 was \$4.0 million compared to a negative provision for common stock warrants recorded as an addition to revenue of \$1.5 million for the three months ended June 30, 2023. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the six months ended June 30, 2024 and 2023 was \$7.7 million and \$11.5 million, respectively.

Operating and Finance Lease Liabilities

As of June 30, 2024, the Company had operating leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash and security deposits (see also Note 19, "Commitments and Contingencies") as summarized below. These leases expire over the next one to seven years. Minimum rent payments under operating leases are recognized on a straight-line basis over the term of the lease.

Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote. At the end of the lease term, the leased assets may be returned to the lessor by the Company, the Company may negotiate with the lessor to purchase the assets at fair market value, or the Company may negotiate with the lessor to renew the lease at market rental rates. No residual value guarantees are contained in the leases. No financial covenants are contained within the lease; however, the lease contains customary operational covenants such as the requirement that the Company properly maintain the leased assets and carry appropriate insurance. The leases include credit support in the form of either cash, collateral or letters of credit. See Note 19, "Commitments and Contingencies", for a description of cash held as security associated with the leases.

The Company has finance leases associated with its property and equipment in Latham, New York and at fueling customer locations.

Finance Obligation

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation as of June 30, 2024 was \$314.8 million, \$76.7 million and \$238.1 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at December 31, 2023 was \$350.8 million, \$74.0 million and \$276.8 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The amount is amortized using the effective interest method. Interest expense recorded related to finance obligations for the three months ended June 30, 2024 and 2023 was \$9.4 million and \$9.8 million, respectively. Interest expense recorded related to finance obligations for the six months ended June 30, 2024 and 2023 was \$19.4 million and \$19.0 million, respectively.

In prior periods, the Company entered into sale/leaseback transactions that were accounted for as financing transactions and reported as part of finance obligations. The outstanding balance of finance obligations related to sale/leaseback transactions as of June 30, 2024 was \$15.9 million, \$8.9 million and \$7.0 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at December 31, 2023 was \$17.6 million, \$10.0 million and \$7.6 million of which was classified as short-term and long-term, respectively, on the unaudited interim condensed consolidated balance sheet.

The fair value of the Company's total finance obligations approximated their carrying value as of June 30, 2024 and December 31, 2023.

Restricted Cash

In connection with certain of the above noted sale/leaseback agreements, cash of \$525.6 million and \$573.5 million was required to be restricted as security as of June 30, 2024 and December 31, 2023, respectively, which restricted cash will be released over the lease term. As of June 30, 2024 and December 31, 2023, the Company also had certain letters of credit backed by security deposits totaling \$340.7 million and \$370.7 million, respectively, of which \$305.6 million and \$340.0 million are security for the above noted sale/leaseback agreements, respectively, and \$35.1 million and \$30.7 million are customs related letters of credit, respectively.

As of June 30, 2024 and December 31, 2023, the Company had \$77.1 million and \$76.8 million held in escrow related to the construction of certain hydrogen production plants, respectively.

The Company also had \$0.1 million and \$1.2 million of consideration held by our paying agent in connection with each of the Joule and CIS acquisitions, respectively, reported as restricted cash as of June 30, 2024, with a corresponding accrued liability on the Company's unaudited interim condensed consolidated balance sheet. Additionally, the Company had \$11.8 million and \$11.7 million in restricted cash as collateral resulting from the Frames acquisition as of June 30, 2024 and December 31, 2023, respectively.

Guarantee

On May 30, 2023, our joint venture, HyVia, entered into a government grant agreement with Bpifrance. As part of the agreement, our wholly-owned subsidiary, Plug Power France, was required to issue a guarantee to Bpifrance in the amount of €20 million through the end of January 2027. Plug Power France is liable to the extent of the guarantee for sums due to Bpifrance from HyVia under the agreement based on the difference between the total amount paid by Bpifrance and the final amount certified by HyVia and Bpifrance. As part of the agreement, there are certain milestones that HyVia is required to meet, and the nonperformance of these milestones or termination of this agreement could result in this guarantee being called upon. As of June 30, 2024, no payments related to this guarantee have been made by the Company and Plug Power France did not record a liability for this guarantee as the likelihood of the guarantee being called upon is remote.

Unconditional Purchase Obligations

The Company has entered into certain off-balance sheet commitments that require the future purchase of goods or services ("unconditional purchase obligations"). The Company's unconditional purchase obligations primarily consist of supplier arrangements, take or pay contracts and service agreements. For certain vendors, the Company's unconditional obligation to purchase a minimum quantity of raw materials at an agreed upon price is fixed and determinable; while certain other raw material costs will vary due to product forecasting and future economic conditions.

Future payments under non-cancelable unconditional purchase obligations with a remaining term in excess of one year as of June 30, 2024, were as follows (in thousands):

Remainder of 2024	\$	27,185
2025		8,023
2026		8,023
2027		2,638
2028		—
2029 and thereafter		—
Total		<u>45,869</u>

Restructuring

In February 2024, in a strategic move to enhance our financial performance and ensure long-term value creation in a competitive market, we approved a comprehensive initiative that encompasses a broad range of measures, including operational consolidation, strategic workforce adjustments, and various other cost-saving actions (the “Restructuring Plan”). These measures are aimed at increasing efficiency, improving scalability, and maintaining our leadership position in the renewable energy industry. We began executing the Restructuring Plan in February 2024 and expect the Restructuring Plan to be completed in the second half of 2024, subject to local law and consultation requirements.

The determination of when we accrue for involuntary termination benefits under restructuring plans depends on whether the termination benefits are provided under an ongoing benefit arrangement or under a one-time benefit arrangement. We account for involuntary termination benefits that are provided pursuant to one-time benefit arrangements in accordance with ASC 420, *Exit or Disposal Cost Obligations* (“ASC 420”) whereas involuntary termination benefits that are part of an ongoing written or substantive plan are accounted for in accordance with ASC 712, *Nonretirement Postemployment Benefits* (“ASC 712”). We accrue a liability for termination benefits under ASC 420 in the period in which the plan is communicated to the employees and the plan is not expected to change significantly. For ongoing benefit arrangements, inclusive of statutory requirements, we accrue a liability for termination benefits under ASC 712 when the existing situation or set of circumstances indicates that an obligation has been incurred, it is probable the benefits will be paid, and the amount can be reasonably estimated. The restructuring charges that have been incurred but not yet paid are recorded in accrued expenses and other current liabilities in our unaudited interim condensed consolidated balance sheets, as they are expected to be paid within the next twelve months.

During the three months ended June 30, 2024, we incurred \$1.6 million in restructuring costs recorded as severance expenses of \$1.6 million and other restructuring costs of \$49 thousand in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. During the six months ended June 30, 2024, we incurred \$7.6 million in restructuring costs recorded as severance expenses of \$6.8 million and other restructuring costs of \$0.8 million in the restructuring financial statement line item in the unaudited interim condensed consolidated statement of operations. We expect to incur another \$0.1 million in restructuring costs in subsequent quarters, which are primarily related to severance expenses, and are expected to be incurred during the third quarter of 2024. The actual timing and amount of costs associated with these restructuring actions may differ from our current expectations and estimates and such differences may be material.

Severance expense recorded during the three and six months ended June 30, 2024 in accordance with ASC 420 was a result of the separation of full-time employees associated with the Restructuring Plan. As of June 30, 2024, \$1.6 million of accrued severance-related costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the third quarter of 2024. Other costs are represented by (1) \$0.2 million of legal and professional services costs, and (2) \$0.6 million of other one-time employee termination benefits. As of June 30, 2024, \$28 thousand of accrued other costs were included in accrued expenses in our unaudited interim condensed consolidated balance sheets and are expected to be paid during the third quarter of 2024.

Extended Maintenance Contracts

On a quarterly basis, we evaluate any potential losses related to our extended maintenance contracts for sales of equipment, related infrastructure and other that have been sold. The following table shows the roll forward of balances in the accrual for loss contracts, including changes due to the provision for loss accrual, releases to service cost of sales, increase to loss accrual related to customer warrants, and foreign currency translation adjustment (in thousands):

	Six months ended	Year ended
	June 30, 2024	December 31, 2023
Beginning balance	\$ 137,853	\$ 81,066
Provision for loss accrual	32,135	85,375
Releases to service cost of sales	(24,937)	(29,713)
Increase to loss accrual related to customer warrants	94	971
Foreign currency translation adjustment	(149)	154
Ending balance	<u>\$ 144,996</u>	<u>\$ 137,853</u>

The Company increased its loss accrual to \$145.0 million for the six months ended June 30, 2024 primarily due to continued cost increases of GenDrive labor, parts and related overhead coupled with new GenDrive contracts entered into requiring provisions to be set up. As a result, the Company increased its estimated projected costs.

Critical Accounting Estimates

The consolidated financial statements of the Company have been prepared in conformity with U.S. generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, we evaluate our estimates and judgments, including but not limited to those related to revenue recognition, valuation of inventories, intangible assets, valuation of long-lived assets, accrual for service loss contracts, operating and finance leases, allowance for doubtful accounts receivable, unbilled revenue, common stock warrants, stock-based compensation, income taxes, and contingencies. We base our estimates and judgments on historical experience and on various other factors and assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about (1) the carrying values of assets and liabilities and (2) the amount of revenue and expenses realized that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

There have been no changes in our critical accounting estimates from those reported in our 2023 Form 10-K.

Recent Accounting Pronouncements

Recently Adopted Accounting Guidance

There have been no significant changes in our reported financial position or results of operations and cash flows resulting from the adoption of new accounting pronouncements.

Recently Issued and Not Yet Adopted Accounting Pronouncements

Other than the standards mentioned in our 2023 Form 10-K, all issued but not yet effective accounting and reporting standards as of June 30, 2024 are either not applicable to the Company or are not expected to have a material impact on the Company.

Item 3 — Quantitative and Qualitative Disclosures about Market Risk

There has been no material change from the information provided in the Company's 2023 Form 10-K under the section titled Item 7A, "Quantitative and Qualitative Disclosures About Market Risk".

Item 4 — Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act, are recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer) as appropriate, to allow for timely decisions regarding required disclosure. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of June 30, 2024.

Remediation of Material Weaknesses

In late 2023 and during the first six months of 2024, with the oversight of the Audit Committee of the Board of Directors, the Company executed its remediation plan to address the material weaknesses identified in Item 9A of our annual report on Form 10-K for the year ended December 31, 2023 related to (1) inventory reserves, specifically surrounding the calculation of excess and obsolete inventory and the lower of cost or net realizable value adjustments of inventory, and (2) long-lived asset impairment related to the review and calculation of the carrying value of asset groupings and projections used as a basis for performing our impairment assessments of certain asset groups.

The Company took the following actions during the execution of its remediation plan:

- Implemented inventory valuation controls at all locations and communicated the requirements for effectively operating such controls to all businesses; and
- Implemented controls over the review of the calculations associated with the Company's long-lived asset impairment assessment at a more precise level of operation.

Management has determined, through its current year testing, that these controls have been designed and implemented effectively and that these controls operated effectively for a sufficient period of time to conclude that the previously disclosed material weaknesses related to inventory valuation and long-lived asset impairment identified as of December 31, 2023 have been remediated as of the date of the filing of this Quarterly Report on Form 10-Q.

Changes in Internal Control over Financial Reporting

There were no changes during the quarter ended June 30, 2024 in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1 – Legal Proceedings

See Note 19, “Commitments and Contingencies”, within Item 1 of this Quarterly Report on Form 10-Q for a discussion regarding material legal proceedings.

Except as otherwise noted, there have been no material developments in legal proceedings. For previously reported information about legal proceedings, refer to Part I, Item 3, “Legal Proceedings”, of the Company’s 2023 Form 10-K.

Item 1A – Risk Factors

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the risk factors that could materially affect the Company’s business, financial condition or future results discussed in the Company’s 2023 Form 10-K in Part I, Item 1A “Risk Factors” and the Company’s Form 10-Q for the quarter ended March 31, 2024 in Part II, Item 1A “Risk Factors”. The risks described in the 2023 Form 10-K and the Form 10-Q for the quarter ended March 31, 2024 are not the only risks that could affect the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect our business, financial condition and/or operating results in the future. As a supplement to the risk factors identified in the 2023 Form 10-K and the Form 10-Q for the quarter ended March 31, 2024, below we have set forth an updated risk factor. Other than as provided below, there have been no material changes to the risk factors identified in the 2023 Form 10-K and the Form 10-Q for the quarter ended March 31, 2024.

The reduction or elimination of government subsidies and economic incentives for alternative energy technologies, or the failure to renew such subsidies and incentives, could reduce demand for our products, lead to a reduction in our revenues, and adversely impact our operating results and liquidity. The Company’s ability to benefit from these subsidies and incentives, in particular the Section 45V Credit for Production of Clean Hydrogen and the Section 48E Clean Electricity Investment Credit, is not guaranteed and is dependent upon the federal government’s forthcoming and ongoing implementation, guidance, regulations, and/or rulemakings that have been the subject of substantial public interest and debate.

We believe that the near term growth of alternative energy technologies will be affected by the availability and size of government and economic incentives. Many of these government incentives expire, phase out over time, may be reduced or discontinued, no longer have available funding, may be implemented differently by changes in administrative agencies, or require renewal by the applicable authority. For example, in August 2022, President Biden signed the IRA into law. The IRA contains hundreds of billions in credits and incentives for the development of renewable energy, clean hydrogen, clean fuels, EVs and supporting infrastructure and carbon capture and sequestration, among other provisions. The IRA contains numerous credits and tax incentives that may be relevant to us, including: (i) a new Section 45V Credit for Production of Clean Hydrogen, which provides a production tax credit of up to \$3 per kg of qualified clean hydrogen over a 10-year credit period for the production of qualified clean hydrogen at a qualified facility in the United States; (ii) an extension and amendment of the Section 48 Investment Tax Credit (“ITC”) for Qualified Fuel Cell Properties, including fuel cell technology; (iii) a new Section 48 Investment Tax Credit for Energy Storage Technologies, which expands the applicability of the investment tax credit to include standalone energy storage projects, among other things; and (iv) a new Section 48E Clean Electricity Investment Tax Credit, which provides a tax credit for investment in facilities that generate clean electricity, among other provisions.

There is uncertainty as to how the provisions under the IRA will be interpreted and implemented. The Company’s ability to ultimately benefit from IRA tax credits and incentives, including the aforementioned, is not guaranteed and is dependent upon the implementation, guidance, rulemakings, and/or regulations from the federal government. Several of these credits and tax incentives, in particular the new Section 45V Credit for Production of Clean Hydrogen, have received substantial public interest and have been subject to debate, and divergent views on potential implementation, guidance, rules, and regulatory principles by a diverse group of interested parties - some of whom are advocating for limitations to

Section 45V that could be materially adverse to the Company and its near term hydrogen generation projects. Specifically, guidance, rules, or regulations limiting a hydrogen production facility's use of renewable energy credits, environmental attributes, and grid electricity could limit the Company's ability to benefit from the Section 45V Credit for Production of Clean Hydrogen. As the Company has endeavored numerous hydrogen generation projects prior to the promulgation of Section 45V's guidance, there is no guarantee that the Company's projects will comply with the final eligibility requirements of Section 45V. Furthermore, the U.S. Department of Treasury issued a notice of proposed rulemaking on the Section 45V Credit for Production of Clean Hydrogen in December 2023. The notice contained draft regulatory requirements that, if finalized, could have material adverse impacts to the Company's hydrogen generation projects - both current and planned. In particular, the draft regulation contains numerous provisions unfavorable for the use of grid electricity and renewable energy credits, which are essential to the Company's ability to claim the Section 45V credit for hydrogen produced at our projects. Relatedly, draft regulations on the Section 48 Investment Tax Credit for Energy Storage Technology contain provisions preventing taxpayers from claiming the energy storage credit for hydrogen storage property not exclusively used for energy-related purposes; and further, draft regulations on the Section 48E Clean Electricity Investment Credit propose burdensome requirements for fuel cells to be eligible for this credit, specifically examination of the greenhouse gas emissions of hydrogen used by the fuel cell system. There is no guarantee that the U.S. Treasury Department's final regulations will be more advantageous for the Company; and in fact, the final regulatory requirements could become less favorable than the draft regulation in the notice of proposed rulemaking. The effect of the final regulations on our business is not yet known but if we are not able to comply with the final eligibility requirements and our competitors are able to do so, our business may be adversely affected.

Furthermore, future political administration changes, legislative enactments, administrative actions, expiration or changes to clean energy tax credits, policies, or other incentives might be more favorable to other technologies or could limit, amend, repeal, or terminate policies or other incentives that the Company currently hopes to leverage, such as the U.S. Department of Energy Loan Programs Office Loan Guarantee. For example, the Section 48 ITC for qualified fuel cell properties is scheduled to expire for fuel cell properties beginning construction after December 31, 2024, and if not extended, there is no guarantee that Plug's fuel cell product will qualify for any federal tax credit thereafter. Any reduction, elimination, or discriminatory application of expiration of tax incentives or other government subsidies and economic incentives, or the failure to renew such tax credits, governmental subsidies, or economic incentives, may result in the diminished economic competitiveness of our products to our customers and could materially and adversely affect the growth of alternative energy technologies, including our products, as well as our future operating results and liquidity.

Item 2 - Unregistered Sales of Equity Securities and Use of Proceeds

- (a) Not applicable.
- (b) Not applicable.
- (c) None.

Item 3 — Defaults Upon Senior Securities

None.

Item 4 — Mine Safety Disclosures

None.

Item 5 — Other Information

- (a) On August 2, 2024, Kyungyeol Song notified the Board of Directors of his decision to resign from the Board of Plug Power Inc. effective immediately. Mr. Song's resignation was not due to any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

(c) Director and Officer Trading Arrangements

On May 17, 2024, Martin Hull, an executive officer of our Company, adopted a stock trading plan established pursuant to Rule 10b5-1 of the Exchange Act, which was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). The trading plan provides for the sale of up to 501,710 shares of the Company's common stock in the aggregate until the earlier of November 28, 2025 or the date all shares are sold thereunder.

On June 3, 2024, Maureen Helmer, a director of our Company, adopted a stock trading plan established pursuant to Rule 10b5-1 of the Exchange Act, which was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). The trading plan provides for the sale of up to 27,056 shares of the Company's common stock in the aggregate until the earlier of December 3, 2025 or the date all shares are sold thereunder.

On June 14, 2024, Keith Schmid, an executive officer of our Company, adopted a stock trading plan established pursuant to Rule 10b5-1 of the Exchange Act, which was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). The trading plan provides for the sale of up to 648,334 shares of the Company's common stock in the aggregate until the earlier of September 12, 2025 or the date all shares are sold thereunder.

The trading plans were entered into during an open insider trading window and are intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act. There were no other Rule 10b5-1 trading arrangements or non-Rule 10b5-1 trading arrangements adopted, modified or terminated by the Company's directors or executive officers during the quarter ended June 30, 2024.

Item 6 — Exhibits

- 3.1 [Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Annual Report on Form 10-K filed on March 16, 2009 and incorporated by reference herein\)](#)
- 3.2 [Certificate of Amendment to Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.3 to Plug Power Inc.'s Annual Report on Form 10-K filed on March 16, 2009 and incorporated by reference herein\)](#)
- 3.3 [Second Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on May 19, 2011 and incorporated by reference herein\)](#)
- 3.4 [Third Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on July 25, 2014 and incorporated by reference herein\)](#)
- 3.5 [Certificate of Correction to Third Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.9 to Plug Power Inc.'s Annual Report on Form 10-K filed on March 10, 2017 and incorporated by reference herein\)](#)
- 3.6 [Fourth Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on June 30, 2017 and incorporated by reference herein\)](#)
- 3.7 [Fifth Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. \(filed as Exhibit 3.7 to Plug Power Inc.'s Quarterly Report on Form 10-Q filed on August 5, 2021 and incorporated by reference herein\)](#)
- 3.8 [Certificate of Designations, Preferences and Rights of a Series of Preferred Stock of Plug Power Inc. classifying and designating the Series A Junior Participating Cumulative Preferred Stock. \(filed as Exhibit 3.1 to Plug Power Inc.'s Registration Statement on Form 8-A filed on June 24, 2009 and incorporated by reference herein\)](#)
- 3.9 [Seventh Amended and Restated By-laws of Plug Power Inc. \(filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on April 26, 2024 and incorporated by reference herein\)](#)
- 10.1* [Relocation and Retention Agreement, dated May 10, 2024, by and between Plug Power Inc. and Sanjay Shrestha](#)
- 10.2 [Offer Letter, dated July 27, 2024 \(filed as Exhibit 10.1 to Plug Power Inc.'s Current Report on Form 8-K filed on August 2, 2024 and incorporated by reference herein\)](#)
- 10.3 [Executive Employment Agreement, dated July 29, 2024, by and between Plug Power Inc. and Dean C. Fullerton \(filed as Exhibit 10.2 to Plug Power Inc.'s Current Report on Form 8-K filed on August 2, 2024 and incorporated by reference herein\)](#)
- 10.4* [Rules of the Plug Power Inc. 2021 Stock Option and Incentive Plan for Awards Granted to Participants in France](#)
- 10.5* [Form of Restricted Stock Unit Award Agreement for Non-U.S. Grantees](#)
- 10.6* [Sublease Agreement, dated December 15, 2021, by and between Vista Real Estate Development LLC and Plug Power Inc.](#)
- 10.7* [First Amendment to Sublease Agreement, dated May 26, 2022, by and between Campus Associates XII LLC and Plug Power Inc.](#)
- 10.8* [Second Amendment to Sublease Agreement, dated February 14, 2024, by and between Campus Associates XII LLC and Plug Power Inc.](#)
- 10.9* [Assignment and Modification of Ground Lease Premises 2, dated November 1, 2023, Campus Associates XI LLC, Vista Development Group, LLC and Plug Power Inc.](#)
- 31.1* [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2* [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.1** [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 32.2** [Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 101.INS* Inline XBRL Instance Document
- 101.SCH* Inline XBRL Taxonomy Extension Schema Document
- 101.CAL* Inline XBRL Taxonomy Extension Calculation Linkbase Document

[Table of Contents](#)

101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Labels Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Submitted electronically herewith.

** Pursuant to Item 601(b)(32)(ii) of Regulation S-K, this certification is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

Signatures

Pursuant to requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PLUG POWER INC.

Date: August 8, 2024

By: /s/ Andrew Marsh

Andrew Marsh
President, Chief Executive
Officer and Director (Principal
Executive Officer)

Date: August 8, 2024

By: /s/ Paul B. Middleton

Paul B. Middleton
Chief Financial Officer (Principal
Financial Officer)

RELOCATION AND RETENTION AGREEMENT

This Agreement is made as of May 10, 2024, by and between Plug Power Inc. (“Employer”), and **Sanjay Shrestha**, an individual employed by Employer (“Employee”).

RECITALS

WHEREAS, Employer desires to encourage the Employee to relocate his primary residence closer to Employer’s office location in Latham, New York to promote more efficient communication and peer engagement;

WHEREAS, Employer desires to encourage the continued dedication of Employee to Employer and to promote the stability of Employer’s management by providing certain incentives to Employee for remaining in the employ of Employer; and

WHEREAS, Employer believes it is imperative that it be able to rely upon Employee to continue in their position, and that Employer be able to receive and rely upon Employee’s advice, if it requests it, as to the best interests of Employer, and its customers, without concern that Employee might be distracted by the personal uncertainties and risks.

NOW THEREFORE, to assure Employer will have the continued dedication of Employee and the availability of their advice, to induce Employee to relocate to Employer’s headquarters, and to induce Employee to remain in the employ of Employer, and for other good and valuable consideration, Employee and Employer agree as follows:

1. **Relocation Payment.** In consideration of Employee relocating his primary residence within thirty (30) miles of Latham, New York no later than December 31, 2024 (“Relocation Date”), within ten (10) days of execution of this Agreement, Employer will pay Employee a lump sum contingent relocation payment of Five Hundred Seventy-Five Thousand Dollars (\$575,000.00) (“Relocation Payment”), less applicable withholdings and deductions. In the event Employee fails to relocate in accordance with this paragraph, Employee shall repay the gross Relocation Payment to Employer within thirty (30) days of the Relocation Date.
 2. **Retention Payment.** To insure Employee remains in the employ of Employer through May 10, 2028 (“Retention Date”), within ten (10) days of execution of this Agreement, Employer will pay Employee a lump sum contingent retention payment of Five Hundred Seventy-Five Thousand Dollars (\$575,000.00) (“Retention Payment”), less applicable withholdings and deductions.
 3. **Claw Back.** In the event Employee’s employment with Employer terminates for Cause (as defined in Section 6(c) of the Employee’s Executive Employment Agreement dated April 16, 2019) or if the Employee terminates without Good Reason (as defined in Section 6(e) of the Employee’s Executive Employment
-

Agreement) before the Retention Date, Employee shall repay to Employer the applicable pre-tax portion of both the Retention Payment and Relocation Payment:

Prior to May 10, 2025	100%
Prior to May 10, 2026	75%
Prior to May 10, 2027	50%
Prior to May 10, 2028	25%

Such repayment shall be made by Employee to Employer in a single lump sum within thirty (30) days of Employee's last day of employment with Employer.

4. Consent to Offset. To the extent a clawback is triggered per Section 3 above, Employee agrees that any repayment due Employer under this Agreement may be deducted to the extent permitted by law from any amounts due Employee from Employer at the time of employment termination, including wages, accrued vacation pay, incentive compensation payments, bonuses and commissions, and hereby expressly authorizes such deduction(s).
 5. Enforcement. Should Employee fail to timely repay to Employer any amounts due under this Agreement, Employee agrees to pay any and all reasonable costs incurred by Employer in collecting the amount due, including reasonable attorneys' fees.
 6. Other Compensation and Benefits. Nothing in this Agreement is intended to alter or impact Employee's entitlement to his base salary, incentive compensation or other benefits.
 7. Tax Liability. Employee acknowledges that Employer has not given any advice as to the characterization of payments received under this Agreement for any personal tax responsibility such payments may generate. Should any taxing authority challenge Employee's treatment or characterization of the payments, Employee acknowledges Employer has no obligation whatsoever to indemnify, defend, aid, pay, or reimburse Employee for any underpayment, overpayment, penalty, or interest charge the taxing authority may assess against or claim is due from Employee.
 8. Choice of Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to New York's rules regarding choice of law. Any proceeding between the parties relating to this Agreement shall be held in a court of competent jurisdiction in the State of New York. All parties agree to be subject to the personal jurisdiction of the courts of New York.
-

9. Severability. If any provision of this Agreement shall be for any reason deemed invalid or unenforceable, it is understood and agreed that the remaining provisions of the Agreement shall be valid and enforceable.
10. Entire Agreement. Employee agrees that he has read and understands this Agreement and that this Agreement constitutes the entire understanding between Employee and Employer, with reference to the subject matter hereof; provided, however, that this Agreement shall not supersede Executive Employment Agreement dated April 16, 2019, which shall remain in full force and effect.
11. Modifications. This agreement shall not be altered or amended except by a written instrument signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date specified in the first paragraph of this Agreement.

PLUG POWER INC.

By: /s/ Andrew Marsh

Andrew Marsh

Chief Executive Officer & President

/s/ Sanjay Shrestha

Employee

**RULES OF THE
PLUG POWER INC. 2021 STOCK OPTION AND INCENTIVE PLAN
FOR AWARDS GRANTED TO PARTICIPANTS IN FRANCE**

I. GENERAL.

1. Introduction.

The Board of Directors (the “*Board*”) of Plug Power Inc. (the “*Company*”) has established the Plug Power Inc. 2021 Stock Option and Incentive Plan (the “*U.S. Plan*”) for the benefit of certain eligible persons, including employees of the Company and its Subsidiaries and Affiliates, including its Subsidiaries and Affiliates in France (each, a “*French Entity*”), of which the Company holds directly or indirectly at least ten percent (10%) of the share capital.

Sections 2(b)(vii) and 2(f) of the U.S. Plan specifically authorize the Board or the compensation committee of the Board or a similar committee performing the functions of the compensation committee (the “*Administrator*”) to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings and to establish subplans and modify exercise procedures and other terms and procedures, to the extent the Administrator determines such actions to be necessary or advisable. The Administrator has determined that it is appropriate and desirable to establish a sub-plan for the purposes of permitting stock options and restricted stock units granted to qualifying participants of a French Entity that qualify for special tax and social security treatment in France. The Administrator, therefore, intends to establish a sub-plan to the U.S. Plan for the purpose of granting “*Options*” (as defined in Section I.2(d) below) that qualify for the special tax and social security treatment in France applicable to stock options granted under Sections L. 225-177 to L. 225-186 and Sections L. 22-10-56 to L. 22-10-58 of the French Commercial Code, as amended from time to time (“*French-Qualified Options*”), and “*Restricted Stock Units*” (as defined in Section I.2(e) below) that qualify for the special tax and social security treatment in France applicable to shares granted for no consideration under Sections L. 225-197-1 to L. 225-197-5 and Sections L. 22-10-59 and L. 22-10-60 of the French Commercial Code, as amended from time to time (such Restricted Stock Units referred to herein as “*French-Qualified RSUs*”), to qualifying participants of a French Entity who are resident in France for French tax purposes and/or subject to the French social security regime (the “*French Participants*”).

The terms of the U.S. Plan applicable to stock options and restricted stock units, as set out in Appendix 1 hereto, subject to the limitations set forth herein, shall constitute the Rules of the Plug Power Inc. 2021 Stock Option and Incentive Plan for Awards Granted to Participants in France (the “*French Sub-Plan*”).

Under the French Sub-Plan, qualifying participants selected at the Administrator’s discretion will be granted Options and Restricted Stock Units only as such terms are defined in Section I.2 hereunder. The provisions of the U.S. Plan permitting the grant of Stock Appreciation Rights, Restricted Stock Awards, Unrestricted Stock Awards, Cash-Based Awards, and Dividend Equivalent Rights, or any combination of the foregoing and all other provisions related exclusively to these types of awards are not applicable to grants made under this French

Sub-Plan. The Options and Restricted Stock Units granted under this French Sub-Plan will be granted solely with respect to common stock of the Company.

The provisions under Parts I and IV of this French Sub-Plan shall apply both to French-Qualified Options and to French-Qualified RSUs. The provisions under Part II of this French Sub-Plan apply only to the grant of French-Qualified Options, and the provisions under Part III of this French Sub-Plan apply only to French-Qualified RSUs.

2. Definitions. Capitalized terms not otherwise defined herein shall have the same meanings as set forth in the U.S. Plan. The terms set out below will have the following meanings:

(a) For French-Qualified Options, the term “*Closed Period*” shall mean, with respect to shares of Stock that are listed on a regulated market, the specific period set forth in set forth in Section L. 22-10-56 of the French Commercial Code, as amended from time to time during which French-Qualified Options may not be granted, including: (i) ten (10) quotation days preceding and including the date on which the annual and intermediate consolidated financial statements are made public, or (ii) the period as from the date the corporate management of the Company possesses confidential information within the meaning of Article 7 of the Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and cancelling the Directive 2003/6/UE and Directives 2003/124/CE Parliament and 2004/72/CE of the Commission), until the date on which this information is disclosed to the public, or (iii) twenty (20) quotation days following an ex-dividend date that offers the right to a dividend or capital increase.

For French-Qualified RSUs, the term “*Closed Period*” shall mean, with respect to shares of Stock that are listed on a regulated market, the specific period set forth in Section L. 22-10-59 of the French Commercial Code, as amended from time to time, during which the sale or transfer of shares of Stock acquired at vesting of French-Qualified RSUs cannot be sold or transferred, including: (i) the thirty (30) calendar day period before the announcement of an intermediate financial report or end-of-year report that the issuer is required to make public; and (ii) with respect to such persons, any period during which the chief executive officer (*directeur général*), any deputy chief executive officer (*directeur général délégué*), or any member of the board of directors (*conseil d'administration*), the supervisory board (*conseil de surveillance*) or the executive board (*directoire*) of the Company, or any employee possesses knowledge of inside information (within the meaning of Article 7 of the Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and cancelling the Directive 2003/6/UE and Directives 2003/124/CE Parliament and 2004/72/CE of the Commission) which has not been disclosed to the public.

If French law or regulations are amended after adoption of this French Sub-Plan to modify the definition and/or applicability of the Closed Period to French-qualified Options and/or French-qualified RSUs, such amendment shall become applicable to any French-Qualified Options and French-Qualified RSUs granted under this French Sub-Plan, to the extent permitted or required by French law.

(b) The term “**Disability**” shall mean disability as determined in categories 2 and 3 under Section L. 341-4 of the French Social Security Code, as amended from time to time, and subject to the fulfillment of related conditions.

(c) The term “**Grant Date**” shall mean the date on which the Administrator both (i) designates the French Participants, and (ii) specifies the material terms and conditions of the French-Qualified Options or French-Qualified RSUs, including the number of shares of Stock subject to the French-Qualified Options or French-Qualified RSUs, the conditions for vesting of the French-Qualified Options or French-Qualified RSUs, the conditions for exercising the French-Qualified Options and any restrictions on the sale of the shares of Stock subject to the French-Qualified Options or French-Qualified RSUs.

(d) The term “**Option**” shall mean a Stock Option (as defined in the U.S. Plan) that includes both:

(i) purchase share options (rights to acquire shares of Stock repurchased by the Company prior to the date on which the Options become exercisable); and

(ii) subscription share options (rights to subscribe for newly-issued shares of Stock).

(e) The term “**Restricted Stock Unit**” shall mean a Restricted Stock Unit granted under the U.S. Plan, pursuant to which the Company will issue to the French Participant, after the vesting conditions for such Restricted Stock Units have been met, at no consideration, one share of Stock for each Restricted Stock Unit granted to the French Participant. No French Participant will have any of the rights of a stockholder with respect to any shares of Stock until the Restricted Stock Units are settled and the shares of Stock are issued to the French Participant, in accordance with the provisions of the Restricted Stock Unit Award Agreement for Non-U.S. Grantees. Dividend and voting rights will not apply until the issuance of shares of Stock after vesting of the Restricted Stock Units. French-Qualified RSU may not be settled in cash.

(f) The term “**Vesting Date**” shall mean the date on which the shares of Stock subject to the French-Qualified RSUs are issued to the French Participant or the date on which the French-Qualified Options become exercisable.

3. Eligibility to Participate.

(a) Subject to Section I.3(c) below, any individual who, on the Grant Date of the French-Qualified Option or the French-Qualified RSU, as applicable, and to the extent required under French law, is a current salaried employee employed under the terms and conditions of an employment contract (“*contrat de travail*”) by a French Entity or who is a corporate officer of a French Entity (subject to Section I.3(b) below) shall be eligible to receive, at the discretion of the Administrator, French-Qualified Options and/or French-Qualified RSUs under this French Sub-Plan, provided the French Participant also satisfies the eligibility conditions of Section 4 of the U.S. Plan.

(b) Neither French-Qualified Options nor French-Qualified RSUs may be issued to an officer of a French Entity, other than the managing corporate officers (“*mandataires sociaux*,” i.e., *Président du Conseil d’Administration, Directeur Général, Directeur Général Délégué*,

Membre du Directoire, Gérant de Sociétés par actions), unless the officer is effectively employed under the terms and conditions of an employment contract (“*contrat de travail*”) with a French Entity, as defined by French law. The Administrator, in its discretion, may impose additional restrictions upon the exercise of the French-Qualified Options and upon the holding and sale of shares of Stock issued upon the vesting of the French-Qualified RSUs or the exercise of the French-Qualified Options granted to a French Participant who qualifies as a managing corporate officer of the Company as defined under French law (*i.e.*, “*mandataires sociaux*” as set forth above).

(c) French-Qualified Options and French-Qualified RSUs may not be issued under the French Sub-Plan to French Participants who own more than ten percent (10%) of the Company’s share capital (as calculated pursuant to Section L. 225-197-1 of the French Commercial Code, as amended from time to time, for French-Qualified RSUs) or to individuals other than employees and corporate officers of a French Entity. Grants of French-Qualified Options and French-Qualified RSUs under this French Sub-Plan may not result in any French Participant’s owning more than ten percent (10%) of the Company’s share capital (as calculated pursuant to Section L. 225-197-1 of the French Commercial Code, as amended from time to time, for French-Qualified RSUs).

(d) The aggregate number of French-Qualified RSUs shall not exceed fifteen percent (15%) of the Company’s share capital, or such other percentage as may be required by French law or regulations as amended after adoption of this French Sub-Plan. The aggregate number of French-Qualified Options granted shall not exceed one-third of the Company’s share capital, or such other percentage as may be required by French law or regulations as amended after adoption of this French Sub-Plan.

4. Delivery of Shares of Stock Only. Only shares of Stock, and not the cash equivalent in lieu of such shares of Stock, may be delivered to any French Participant pursuant to the French-Qualified Options and French-Qualified RSUs granted under this French Sub-Plan.

5. Non-Transferability. Except in the case of death, neither French-Qualified Options nor French-Qualified RSUs may be sold, assigned, transferred, pledged or otherwise encumbered to a party other than the French Participant to whom the Award is granted. The French-Qualified Options are exercisable only by the French Participant during the French Participant’s lifetime, subject to Sections II.3(c) and II.4 below. The shares of Stock underlying the French-Qualified RSUs shall be issued only to the French Participant during the French Participant’s lifetime, subject to Sections III.1(a) and III.3 below.

6. Disqualification of French-Qualified Options and French-Qualified RSUs. If, following the grant, changes are made to the terms and conditions of the French-Qualified Options and/or French-Qualified RSUs due to any applicable legal requirements or a decision of the Company’s shareholders, the Board or the Committee, the Options, and/or Restricted Stock Units may no longer qualify as French-Qualified Options and French-Qualified RSUs. If the Options, and/or Restricted Stock Units no longer qualify as French-Qualified Options and/or French-Qualified RSUs, the Administrator may determine, in its sole discretion, to lift, shorten or terminate certain restrictions applicable to the vesting or exercisability of the Options, the vesting of the Restricted Stock Units or to the sale of the shares of Stock underlying the Options,

and/or Restricted Stock Units, which restrictions have been imposed under this French Sub-Plan or in the applicable award agreement delivered to the French Participant.

7. Employment Rights. The adoption of this French Sub-Plan (a) shall not confer any employment rights upon the French Participants or any employees of a French Entity, and (b) shall not be construed as a part of any employment contracts that a French Entity has with its employees.

8. Amendments. Subject to the terms of the U.S. Plan, the Administrator reserves the right to amend or terminate this French Sub-Plan at any time in accordance with applicable French law.

II. FRENCH-QUALIFIED OPTIONS.

1. Closed Period. French-Qualified Options may not be granted during a Closed Period to the extent that such Closed Periods are applicable to French-Qualified Options granted by the Company.

2. Conditions of French-Qualified Options.

(a) The exercise price and number of underlying shares of Stock shall not be modified after the Grant Date, except as provided in Section II.5 of this French Sub-Plan, or as otherwise authorized by French law. Any other modification permitted under the U.S. Plan may result in the Option no longer qualifying as a French-Qualified Option.

(b) The French-Qualified Options will vest and become exercisable pursuant to the terms and conditions set forth in the U.S. Plan, this French Sub-Plan, and the applicable award agreement delivered to each French Participant.

(c) The exercise price per share of Stock payable pursuant to French-Qualified Options granted under this French Sub-Plan shall be fixed by the Administrator on the Grant Date and shall be determined in accordance with the method for determining the exercise price set forth by the Administrator and Sections L. 225-177 to L. 225-186 of the French Commercial Code, as amended from time to time.

3. Exercise of French-Qualified Options.

(a) Exercisability. When a French-Qualified Option is granted, the Administrator shall fix the period within which the Option vests and may be exercised and shall determine any conditions that must be satisfied before the Option may be exercised. Specifically, the Administrator, in order to obtain the special tax and social security treatment pursuant to the relevant Section of the French Tax Code, as amended from time to time, or the relevant Section of the French Social Security Code, as amended from time to time, may provide for a holding period measured from the Grant Date for the vesting or exercise of a French-Qualified Option or for the sale of shares of Stock acquired pursuant to such exercise. Such holding period for the vesting or exercise of a French-Qualified Option or the sale of shares of Stock, if any required, shall be set forth in the applicable award agreement. The holding period restricting the sale of shares of Stock shall not exceed three (3) years from the exercise date of a French-Qualified Option.

(b) Payment of Exercise Price and Withholding. Upon exercise of a French-Qualified Option, the full exercise price and any required withholding tax and/or social security contributions shall be paid by the French Participant as set forth in the applicable award agreement. Under a "same day sale" program, the French Participant may give irrevocable instructions to a broker to sell the shares of Stock otherwise deliverable upon the exercise of the Option and to deliver promptly to the Company an amount equal to the aggregate exercise price. No delivery of other shares of Stock already owned by the French Participant may be used to pay the exercise price.

(c) Death. In the event of the death of a French Participant, the French Participant's French-Qualified Options thereafter shall be immediately vested and exercisable in full under the conditions set forth by Section II.4 of this French Sub-Plan.

(d) Account for Shares of Stock. The shares of Stock acquired upon exercise of a French-Qualified Option will be recorded in an account in the name of the French Participant with the Company or a broker or in such manner as the Company otherwise may determine in order to ensure compliance with applicable laws, including any requisite holding periods.

4. Death. Upon the death of a French Participant during active employment, all French-Qualified Options shall become immediately vested and exercisable and may be exercised in full by the French Participant's heirs or the legal representative of the French Participant's estate for the six (6)-month period following the date of the French Participant's death, unless vesting of such French-Qualified Options is subject to performance-vesting requirement or any objective vesting requirement that does not depend on the French Participant. In such case, the applicable award agreement delivered to the French Participant may provide that the underlying shares will not become transferable to the French Participant's heirs unless and until such objective conditions are satisfied. Upon the death of a French Participant after termination of active employment, the treatment of French-Qualified Options will be as set forth in the applicable award agreement and, to the extent vested at the time of the French Participant's death, the French-Qualified Options may be exercised in full by the French Participant's heirs or the legal representative of the French Participant's estate for the six (6)-month period following the date of the French Participant's death. In any case, any French-Qualified Option that remains unexercised shall expire six (6) months after the French Participant's date of death. The six (6)-month exercise period shall apply without regard to the term of the French-Qualified Options as described in Section II.6 of this French Sub-Plan.

5. Adjustments and Change of Control. Adjustments of the French-Qualified Options granted hereunder may be made to preclude the dilution or enlargement of benefits under the French-Qualified Options in the event of a transaction by the Company as set forth in Section L. 225-181 of the French Commercial Code, as amended from time to time, and in case of a repurchase of shares of Stock by the Company at a price higher than the share quotation price in the open market, and according to the provisions of Section L. 228-99 of the French Commercial Code, as amended from time to time, as well as according to specific decrees. Should adjustments be made in the case of a transaction for which adjustments are not recognized under such French laws, the Options may no longer qualify as French-Qualified Options.

In the event of capitalization adjustments or adjustments upon a Sale Event as set forth in Sections 3(c) and (d) of the U.S. Plan, the Options may no longer qualify as French-Qualified Options unless the adjustments are recognized under applicable French legal and tax rules. The Administrator, at its discretion, may make adjustments to the Options, notwithstanding that the adjustment is not recognized under French law; however, in such case, the Options may no longer qualify as French-Qualified Options. Finally, if the French-Qualified Options are assumed or substituted or if vesting or exercisability is accelerated due to a Sale Event, the Options may no longer be considered as French-Qualified Options.

6. Term of French-Qualified Options. French-Qualified Options granted pursuant to this French Sub-Plan will expire no later than nine (9) years and six (6) months after the Grant Date, unless otherwise specified in the applicable award agreement. The Option term will be extended only upon the death of a French Participant, but in no event will any French-Qualified Option be exercisable beyond six (6) months following the French Participant's date of death.

7. Interpretation. The Options granted under this French Sub-Plan are intended to qualify for the special tax and social security treatment applicable to stock options granted under Sections L. 225-177 to L. 225-186 and Sections L. 22-10-56 to L. 22-10-58 of the French Commercial Code, as amended from time to time, and in accordance with the relevant provisions set forth by French tax law and the French tax administration, but the Company does not undertake to maintain this status. The terms of this French Sub-Plan shall be interpreted accordingly and in accordance with the relevant provisions set forth by French tax and social security laws and relevant guidelines published by French tax and social security administrations and subject to the fulfillment of legal, tax, and reporting obligations, to the extent applicable. In the event of any conflict between the provisions of this French Sub-Plan and the U.S. Plan, the provisions of this French Sub-Plan shall control for any grants of Options made hereunder to French Participants.

III. FRENCH-QUALIFIED RSUs.

1. Conditions of the French-Qualified RSUs.

(a) Vesting of French-Qualified RSUs. French-Qualified RSUs shall not vest and the shares of Stock underlying the French-Qualified RSUs shall not be delivered to the French Participants prior to the expiration of the specific period calculated from the Grant Date as may be required to comply with the minimum mandatory vesting period applicable to French-Qualified RSUs under Section L. 225-197-1 of the French Commercial Code, as amended from time to time, or under the relevant sections of the French Tax Code or the French Social Security Code, as amended from time to time, to benefit from the special tax and social security treatment in France. However, notwithstanding the vesting requirements described above, upon the death of a French Participant, all of the French Participant's outstanding French-Qualified RSUs shall become transferable under the conditions set forth in Section III.3 of this French Sub-Plan. In the event of Disability (as defined in this French Sub-Plan), the French Participant's outstanding French-Qualified RSUs may become vested without regard to the minimum mandatory vesting period described above, if so determined by the Company and set forth in the applicable award agreement.

(b) Holding of Shares of Stock. The sale or transfer of shares of Stock issued pursuant to the French-Qualified RSUs may not occur prior to the relevant anniversary of the Vesting Date specified by the Administrator as may be required to comply with the minimum mandatory holding period applicable to French-Qualified RSUs under Section L. 225-197-1 of the French Commercial Code, as amended from time to time, or the relevant sections of the French Tax Code or the French Social Security Code, as amended from time to time, to benefit from the special tax and social security regime, even if the French Participant is no longer an employee or corporate officer of a French Entity. In addition, the shares of Stock issued pursuant to the French-Qualified RSUs may not be sold or transferred during a Closed Period, so long as those Closed Periods are applicable to shares of Stock underlying French-Qualified RSUs.

(c) French Participant's Account. Shares of Stock issued pursuant to the French-Qualified RSUs shall be recorded and held in an account in the name of the French Participant with the Company or a broker or in such other manner as the Company may determine in order to ensure compliance with applicable laws, including any required holding periods.

2. Adjustments and Change of Control. In the event of capitalization adjustments or adjustments upon a Sale Event as set forth in Sections 3 (c) and (d) of the U.S. Plan, the Restricted Stock Units may no longer qualify as French-Qualified RSUs unless the adjustments are recognized under applicable French legal and tax rules. The Administrator, at its discretion, may make adjustments to the Restricted Stock Units, notwithstanding that the adjustments are not recognized under French law, in which case the Restricted Stock Units may no longer qualify as French-Qualified RSUs. Finally, if the French-Qualified RSUs are assumed or substituted or if vesting or the holding period is accelerated due to a Sale Event, the Restricted Stock Units may no longer be considered as French-Qualified RSUs.

3. Death and Disability. Upon the death of a French Participant, any French-Qualified RSUs held by the French Participant at the time of death shall become immediately vested and the underlying Shares transferable to the French Participant's heirs, unless vesting of such French-Qualified RSUs is also subject to performance-vesting conditions in which case the Restricted Stock Unit Agreement delivered to the French Participant may provide that the underlying Shares will not become vested and transferable to the French Participant's heirs unless and until the performance vesting conditions are satisfied. The Company shall issue the shares of Stock to the French Participant's heirs, at their request, provided the heirs contact the Company and request such transfer of the shares within six (6) months following the death of the French Participant. If the French Participant's heirs do not request the issuance of the shares of Stock underlying the French-Qualified RSUs within six (6) months after the French Participant's death, the French-Qualified RSUs will be forfeited. The French participant's heirs shall not be subject to the restrictions on the transfer of shares of Stock set forth in Section III.1(b) of this French Sub-Plan. If a French Participant ceases to be employed by the Company or a French Entity by reason of the French Participant's Disability (as defined in this French Sub-Plan), the French Participant shall not be subject to the restrictions on the transfer of shares of Stock set forth in Section III.1(b) of this French Sub-Plan.

4. Interpretation. The Restricted Stock Units granted under this French Sub-Plan are intended to qualify for the special tax and social security treatment applicable to shares granted for no consideration under Sections L. 225-197-1 to L. 225-197-5 and Sections L. 22-10-59 and

L. 22-10-60 of the French Commercial Code, as amended from time to time, and in accordance with the relevant provisions set forth by French tax and social security laws, but the Company does not undertake to maintain this status. The terms of this French Sub-Plan shall be interpreted accordingly and in accordance with the relevant provisions set forth by French tax and social security laws and relevant guidelines published by French tax and social security administrations and subject to the fulfilment of certain legal, tax, and reporting obligations, to the extent applicable. In the event of any conflict between the provisions of this French Sub-Plan and the U.S. Plan, the provisions of this French Sub-Plan shall control for any grants of Restricted Stock Units made hereunder to French Participants.

IV. ADOPTION

The French Sub-Plan was adopted by the Board on August 7, 2024 and became effective as of that date.

**RESTRICTED STOCK UNIT AWARD AGREEMENT
FOR NON-U.S. GRANTEES
UNDER THE PLUG POWER INC.
2021 STOCK OPTION AND INCENTIVE PLAN**

Name of Grantee: _____
 No. of Restricted Stock Units: _____
 Grant Date: _____

Pursuant to the Plug Power Inc. 2021 Stock Option and Incentive Plan, as amended through the date hereof (the “Plan”), and this Restricted Stock Unit Award Agreement for Non-U.S. Grantees, including any additional terms and conditions for the Grantee’s country in the addendum attached hereto (the “Addendum” and collectively with the Restricted Stock Unit Award Agreement for Non-U.S. Grantees, the “Agreement”), Plug Power Inc. (the “Company”) hereby grants an award of the number of Restricted Stock Units listed above (an “Award”) to the Grantee named above. Each Restricted Stock Unit shall relate to one share of Common Stock, par value \$0.01 per share (the “Stock”), of the Company.

1. Restrictions on Transfer of Award. This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any shares of Stock issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Stock Units have vested as provided in Paragraph 2 of this Agreement and (ii) the shares of Stock have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. Vesting of Restricted Stock Units. The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains in a Service Relationship (as defined in the Plan) on such Vesting Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Stock Units specified as vested on such date.

<u>Incremental Number of Restricted Stock Units Vested</u>	<u>Vesting Date</u>
_____ (_ %)	_____
_____ (_ %)	_____
_____ (_ %)	_____
_____ (_ %)	_____

In addition, if the Grantee’s Service Relationship is terminated by the Company or an Affiliate, as applicable, without Cause (as defined below) upon or within 12 months following a Sale Event (as defined in the Plan), all outstanding Restricted Stock Units shall become fully vested as of the date of such termination. For purposes hereof, “Cause” shall have the meaning set forth



in the employment or other service agreement between the Company or an Affiliate, as applicable, and the Grantee. In the event that the Grantee is not party to an employment or other service agreement or the applicable agreement does not contain a definition of "Cause," it shall mean a determination by the Administrator that the Grantee shall be dismissed as a result of (i) any material breach by the Grantee of any agreement between the Grantee and the Company or any Affiliate; (ii) the conviction of, indictment for or plea of nolo contendere by the Grantee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Grantee of the Grantee's duties to the Company or any Affiliate. The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 2.

3. Termination of Service Relationship. Except as set forth in Paragraph 2 above, if the Grantee's Service Relationship terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Stock Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and neither the Grantee nor any of his or her successors, heirs, assigns, or personal representatives will thereafter have any further rights or interests in such unvested Restricted Stock Units. For the avoidance of doubt, service during only a portion of the vesting period, but where the Grantee's Service Relationship has terminated prior to a Vesting Date, will not entitle the Grantee to vest in a pro-rata portion of the Restricted Stock Units or any compensation for lost vesting.

For purposes of this Award, the Grantee's Service Relationship will be considered terminated as of the date the Grantee is no longer actively providing services to the Company or any Affiliate (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment or other laws in the jurisdiction where the Grantee is employed or otherwise providing services or the terms of the Grantee's employment or other service agreement, if any). The termination date for purposes of this Award will not be extended by any notice period (e.g., the Grantee's period of service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Grantee is employed or otherwise providing services or the terms of the Grantee's employment or other service agreement, if any). The Administrator shall have the exclusive discretion to determine when the Grantee is no longer actively providing services for purposes of the Award (including whether the Grantee may still be considered to be providing services while on a leave of absence).

4. Issuance of Shares of Stock. As soon as practicable following each Vesting Date (but in no event later than two and one-half months after the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of shares of Stock equal to the aggregate number of Restricted Stock Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a stockholder of the Company with respect to such shares of Stock.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. Responsibility for Taxes. The Grantee acknowledges that, regardless of any action taken by the Company, or if different, the Affiliate which employs the Grantee or for which the Grantee otherwise provides service (the “Service Recipient”), the ultimate liability for all income tax, social security contributions, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Grantee’s participation in the Plan and legally applicable or deemed legally applicable to the Grantee (“Tax-Related Items”) is and remains the Grantee’s responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. The Grantee further acknowledges that the Company and/or the Service Recipient (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Restricted Stock Units or the underlying shares of Stock, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the subsequent sale of shares of Stock acquired pursuant to such settlement and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the Restricted Stock Units to reduce or eliminate the Grantee’s liability for Tax-Related Items or achieve any particular tax result. Further, if the Grantee is subject to Tax-Related Items in more than one jurisdiction, the Grantee acknowledges that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

In connection with any relevant taxable or tax withholding event, as applicable, the Grantee agrees to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax-Related Items. In this regard, the Grantee authorizes the Company and/or the Service Recipient, or their respective agents, at their discretion, to satisfy any applicable withholding obligations or rights with regard to all Tax-Related Items by one or a combination of: (i) requiring the Grantee to make a payment in a form acceptable to the Company; (ii) withholding from the Grantee’s wages or other cash compensation payable to the Grantee; (iii) withholding from proceeds of the sale of shares of Stock acquired upon settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on the Grantee’s behalf pursuant to this authorization without further consent); (iv) withholding shares of Stock to be issued upon settlement of the Restricted Stock Units; (v) any other method of withholding determined by the Company and, to the extent required by applicable law or the Plan, approved by the Administrator.

The Company may withhold or account for Tax-Related Items by considering statutory or other withholding rates, including minimum or maximum rates applicable in the Grantee’s jurisdiction(s). In the event of over-withholding, the Grantee may receive a refund from the Company of any over-withheld amount in cash (with no entitlement to the equivalent in shares of Stock), or if not refunded by the Company, the Grantee must seek a refund from the local tax authorities to the extent the Grantee wishes to recover the over-withheld amount in the form of a refund. If the obligation for Tax-Related Items is satisfied by withholding shares of Stock, for tax purposes, the Grantee will be deemed to have been issued the full number of shares of Stock subject to the vested Restricted Stock Units, notwithstanding that a number of the shares of Stock is held back solely for the purpose of paying the Tax-Related Items. The Company may refuse to issue or deliver the shares of Stock or the proceeds from the sale of shares of Stock to the Grantee if the Grantee fails to comply with the Grantee’s obligations in connection with the Tax-Related Items.

Finally, the Grantee agrees to pay to the Company or the Service Recipient any amount of Tax-Related Items that the Company or the Service Recipient may be required to withhold or account for as a result of the Grantee's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the underlying shares of Stock, if the Grantee fails to comply with his or her obligations in connection with the Tax-Related Items.

7. Nature of Grant. In accepting the Restricted Stock Units, the Grantee acknowledges, understands and agrees that:

- (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;
- (b) the grant of the Restricted Stock Units is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past;
- (c) all decisions with respect to future Restricted Stock Units or other awards, if any, will be at the sole discretion of the Administrator;
- (d) the Grantee is voluntarily participating in the Plan;
- (e) the Restricted Stock Units are granted as an incentive for future services and in no event should be considered as compensation for, or relating in any way to, past services for the Company or Service Recipient;
- (f) the Restricted Stock Units and the shares of Stock subject to the Restricted Stock Units, and the income from and value of same, are not intended to replace any pension rights or compensation;
- (g) the Restricted Stock Units and the shares of Stock subject to the Restricted Stock Units, and the income from and value of same, are not part of normal or expected wages or salary for any purposes, including, but not limited to, calculation of any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, holiday pay, long-service awards, pension or retirement benefits or similar payments;
- (h) the future value of the underlying shares of Stock is unknown and cannot be predicted with certainty;
- (i) the value of the shares of Stock acquired upon settlement of the Restricted Stock Units may increase or decrease in value;
- (j) unless otherwise agreed with the Company in writing, the Restricted Stock Units and the shares of Stock subject to the Restricted Stock Units, and the income from and value of same, are not granted as consideration for, or in connection with, the service the Grantee may provide as a director of any Affiliate;

(k) no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from the termination of the Grantee's Service Relationship (for any reason whatsoever whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or other service agreement, if any); and

(l) neither the Company nor any Affiliate shall be liable for any foreign exchange rate fluctuation between the Grantee's local currency and the United States Dollar that may affect the value of the Restricted Stock Units or of any amounts due to the Grantee pursuant to the settlement of the Restricted Stock Units or the subsequent sale of any shares of Stock acquired upon settlement.

8. No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Grantee's participation in the Plan, or the Grantee's acquisition or sale of the underlying shares of Stock. The Grantee should consult with the Grantee's own personal tax, legal and financial advisors regarding the Grantee's participation in the Plan before taking any action related to the Plan.

9. Section 409A of the Code. This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

10. No Obligation to Continue Service Relationship. Neither the Company, the Service Recipient nor any other Affiliate is obligated by or as a result of the Plan or this Agreement to continue the Grantee's Service Relationship and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Affiliate, as applicable, to terminate the Grantee's Service Relationship at any time.

11. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

12. Data Privacy Consent.

(a) Data Collection and Usage. *The Company and the Service Recipient collect, process and use certain personal information about the Grantee, including, but not limited to, the Grantee's name, home address, telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any shares of Stock or directorships held in the Company, details of all Restricted Stock Units granted under the Plan or any other entitlement to shares of Stock awarded, cancelled, exercised, vested, unvested or outstanding in the Grantee's favor ("Data"), for the legitimate purpose of implementing, administering and managing the Plan. Where required, the legal basis for the collection and processing of Data is the Grantee's consent.*

(b) Stock Plan Administration and Service Provider. *The Company will transfer Data to independent service providers, including Morgan Stanley and Broadridge Corporate Issuer Solutions, which are assisting the Company with the implementation, administration and management of the Plan (individually, the "Service Provider"). The*

Grantee may be asked to agree on separate terms and data processing practices with the Service Provider, with such agreement being a condition to the ability to participate in the Plan. Where required, the legal basis for the transfer of Data to the Service Provider is the Grantee's consent.

(c) *International Data Transfers.* *The Company and the Service Provider are based in the United States. The Grantee's country or jurisdiction may have different data privacy laws and protections than the United States. The Company's legal basis, where required, for the transfer of Data is the Grantee's consent.*

(d) *Data Retention.* *The Company will hold and use Data only as long as is necessary to implement, administer and manage the Grantee's participation in the Plan, or as required to comply with legal or regulatory obligations, including under tax, exchange control, securities and labor laws. This may mean Data may be retained until after the Grantee's Service Relationship ends, plus any additional time periods necessary for compliance with law, exercise or defense of legal rights, archiving, back-up and deletion purposes.*

(e) *Voluntariness and Consequences of Consent Denial or Withdrawal.* *Participation in the Plan is voluntary and the Grantee is providing the consents herein on a voluntary basis. The Grantee understands that the Grantee may request to stop the transfer and processing of the Data for purposes of the Grantee's participation in the Plan and that the Grantee's Service Relationship will not be affected. The only consequence of refusing or withdrawing consent is that the Company would not be able to allow the Grantee to participate in the Plan. The Grantee understands that the Data will still be processed in relation to the Grantee's Service Relationship for record-keeping purposes.*

(f) *Data Subject Rights.* *The Grantee may have a number of rights under data privacy laws in the Grantee's jurisdiction. Depending on where the Grantee is based, such rights may include the right to (i) request access to or copies of Data the Company processes, (ii) rectify incorrect Data, (iii) delete Data, (iv) restrict the processing of Data, (v) restrict the portability of Data, (vi) lodge complaints with competent authorities in the Grantee's jurisdiction, and/or (vii) receive a list with the names and addresses of any potential recipients of Data. To receive clarification regarding these rights or to exercise these rights, the Grantee can contact the Grantee's local human resources representative.*

13. *Notices.* *Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.*

14. *Governing Law and Venue.* *This Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware. For purposes of any action, lawsuit or other proceedings brought to enforce this Agreement, relating to it, or arising from it, the parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located in the state of Delaware.*

15. Compliance with Law. Notwithstanding any other provision of the Plan or this Agreement, unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Stock, the Company shall not be required to permit the vesting of the Restricted Stock Units and/or deliver any shares of Stock prior to the completion of any registration or qualification of the shares of Stock under any U.S. or non-U.S. local, state or federal securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission ("SEC") or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. The Grantee understands that the Company is under no obligation to register or qualify the shares of Stock with the SEC or any U.S. state or non-U.S. securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares of Stock subject to this Restricted Stock Unit. Further, the Grantee agrees that the Company shall have unilateral authority to amend this Agreement without the Grantee's consent to the extent necessary to comply with securities or other laws applicable to issuance of the shares of Stock subject to the Restricted Stock Units.

16. Electronic Delivery and Participation. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Grantee hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line electronic system established and maintained by the Company or a third party designated by the Company.

17. Language. The Grantee acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English, so as to allow the Grantee to understand the terms and conditions of this Agreement. If the Grantee has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

18. Addendum. Notwithstanding any provisions in this Restricted Stock Unit Award Agreement for Non-U.S. Grantees, the Restricted Stock Units shall be subject to any additional terms and conditions for the Grantee's country set forth in the Addendum attached hereto. Moreover, if the Grantee relocates to one of the countries included in the Addendum, the additional terms and conditions for such country, if any, will apply to the Grantee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Addendum constitutes part of this Agreement.

19. Imposition of Other Requirements. The Company reserves the right to impose other requirements on the Grantee's participation in the Plan, on the Restricted Stock Units and on the shares of Stock acquired upon the vesting of the Restricted Stock Units, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require the Grantee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

20. Waiver. The Grantee acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Grantee or any other grantee.

21. Severability. The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

22. Insider Trading Restrictions/Market Abuse Laws. The Grantee acknowledges that, depending on his or her country, the Grantee may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions, which may affect his or her ability to acquire, sell or attempt to sell shares of Stock or rights to shares of Stock (e.g., Restricted Stock Units) under the Plan during such times as the Grantee is considered to have “inside information” regarding the Company (as defined by laws in the applicable jurisdiction or the Grantee’s country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Grantee acknowledges that it is his or her responsibility to comply with any applicable restrictions as well as any applicable Company insider trading policy, and the Grantee is advised to speak to his or her personal advisor on this matter.

23. Foreign Asset/Account Reporting Requirements. The Grantee acknowledges that there may be certain foreign asset and/or account reporting requirements which may affect the Grantee’s ability to acquire or hold the shares of Stock acquired under the Plan or cash received from participating in the Plan (including from any dividends paid on the shares of Stock acquired under the Plan) in a brokerage or bank account outside the Grantee’s country. The Grantee may be required to report such accounts, assets or transactions to the tax or other authorities in his or her country. The Grantee also may be required to repatriate sale proceeds or other funds received as a result of participating in the Plan to the Grantee’s country through a designated bank or broker within a certain time after receipt. The Grantee acknowledges that it is his or her responsibility to be compliant with such regulations, and the Grantee is advised to speak to his or her personal advisor on this matter.

PLUG POWER INC.

By: _____
Title:

The foregoing Agreement (including the Addendum attached hereto) is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: _____

Grantee's Signature

Grantee's name and address:

SUBLEASE AGREEMENT

VISTA REAL ESTATE DEVELOPMENT LLC
LANDLORD

and

PLUG POWER, INC.
TENANT

For a portion of the premises located at
125 Vista Boulevard, Town of Bethlehem,
County of Albany, State of New York

TABLE OF CONTENTS

LIST OF EXHIBITS

EXHIBIT A - Site Plan	A-1
EXHIBIT B - Fee Owner Recognition Agreement	B-1
EXHIBIT C -Lease Commencement Agreement	C-1
EXHIBIT D-Plans and Specifications -Landlord's Work	D-1
EXHIBIT E - Subordination Non Disturbance Agreement	E-1
EXHIBIT F Estoppel	
EXHIBIT G - Pilot Schedule	
EXHIBIT H - Green Building Practices	

BASIC SUBLEASE INFORMATION

The Basic Sublease Information outlines some of the material business terms of the Lease, however it is qualified in all respects by the applicable provisions of the Lease, and if there is a conflict between the Basic Lease Information and the provisions of the Lease, the Lease shall control.

Date of Lease: December 15, 2021

Landlord: Vista Real Estate Development LLC

Tenant: Plug Power, Inc.

Building Address: 125 Vista Boulevard, Town of Bethlehem, County of Albany, State of New York

Building size: Deemed to be 350,000 square feet

Improvements: Deemed to be 350,000 square feet

Term: Fifteen (15) years from the Full Rent Commencement Date

Target Date for Full Rent Commencement: December 31, 2022

Initial Annual Rent upon Full Rent Commencement: \$3,517,500.00 (\$10.05 per SF)

Additional Rent: See Paragraph 3.02 of the Lease

Initial Monthly Rent Upon Full Rent Commencement: \$293,125.00

Extension Term: See Paragraph 2.02 of the Lease

Service of Notices: By registered or certified mail, or express mail as set forth in Article 22 of the Lease

State: New York

SUBLEASE AGREEMENT

PARTIES

THIS SUBLEASE (“Lease”), made as of the 15th day of December 2021, by and between Vista Real Estate Development LLC, having its principal office at 302 Washington Avenue Extension, Albany, New York 12203 (“Landlord”) and Plug Power, Inc. a New York corporation with an address at 968 Albany Shaker Road, Latham, New York 12110 (“Tenant”).

ARTICLE I

LEASE OF PREMISES/EXPANSION OPTION

Section 1.01. **Lease of Premises.** Landlord has a ground leasehold interest in the Project defined herein. The ground lease will be for an initial term of 99 years with an option to extend the ground lease for an additional 99 years. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the covenants, agreements, provisions and conditions of this Lease an approximate 24.54 acre parcel of land (“Land”) along with 350,000 square foot of space as follows: a 200,000 square foot one story warehouse/manufacturing building (“Phase 1”), a 50,000 square foot, two story office building (“Phase 2”) and a 100,000 square foot, one story service building (“Phase 3”) (each a “Building and collectively the “Buildings”) (the Buildings and Land and other appurtenances thereof including but not limited to landscaping, sidewalks, driveways, parking areas and curbs are collectively referred to in this Lease as the “Leased Premises” or “Project” or “Premises”), as more particularly shown on the site plan attached hereto as **Exhibit A** (“Site Plan”).

Section 1.02. **Parking.** Landlord shall provide to Tenant 300 lighted parking spaces in Phase 1 and 300 lighted parking spaces in Phase 2 and 3, in such locations shown on the Site Plan, for a total of 600 lighted parking spaces at the Project. Notwithstanding the foregoing however, in no event shall the available parking be less than required by municipal code as of the Full Rent Commencement Date. Landlord shall also provide to the Tenant parking for up to 25 tractor trailers and a one (1) acre laydown area.

Section 1.03 **Easement Area.** The Landlord has an easement over a portion of the Option Property [defined in Section 1.04 herein] which will be used for a portion of the Tenant parking and roadways for circulation and guard shed. For all purposes in this Lease, the Easement Area will be included in the definition of the Leased Property except for the payment of Annual Rent. During the term of the Lease Tenant shall keep and maintain the parking, roadways and guard shed in good condition and repair. The easement area will in no way obstruct the Tenant’s access and use of the premises. The Landlord further agrees to provide a survey showing the easement area.

Section 1.04. **Fee Owner Recognition.** The Landlord will obtain from the fee owner of the Land a fee owner recognition agreement in favor of Tenant the form of which is attached hereto as **Exhibit B**.

ARTICLE 2
TERM/ EARLY TERMINATION OPTION

Section 2.01. **Initial Term.** The Lease shall be effective upon execution by both parties. Tenant shall lease the Leased Premises to commence on the Term Commencement Date, as hereinafter defined, subject to extension as hereinafter provided. The Initial Term shall expire on the fifteen (15) year anniversary of the Full Rent Commencement Date. Within ten (10) days after the Full Rent Commencement Date, the parties shall enter into an Agreement of Lease Commencement, in the form marked **Exhibit C**, setting forth the commencement, rent commencement and expiration dates of the Initial Term and the commencement date of the Extension Term[s] (as hereinafter defined).

Section 2.02. **Extension Terms.** Tenant is hereby granted six (6) options to extend the Term of this Lease (the "Extension Term") for an additional five (5) year term each upon the following terms and conditions:

(A) At the time of the exercise of the option to extend and at the time of said extension, the Tenant shall not be in default in accordance with the terms and provisions of this Lease.

(B) Notice of the exercise of the option to extend with respect to each option term shall be received by the Landlord in writing at least twelve (12) months before the expiration of the then existing Term ("Exercise Notice"). Landlord will provide Tenant with written notice of the coming extension option date a minimum of six (6) months in advance of Tenant's required notice.

(C) The annual rent during each the Extension Term shall be as set forth in Section 3.01 of this Lease.

Section 2.03. **Term of this Lease.** The word "Term" and the words "Term of this Lease" shall mean the Initial Term and any Extension Term which may become effective.

Section 2.04. **Termination Option.** Provided Tenant is not in default of this Lease, it shall have the option at any time after IO years from the Full Rent Commencement Date and during the initial term of the Lease, to terminate this Lease upon 9 months prior written notice to the Landlord. Such notice shall not be given until the IO year anniversary of the Full Rent Commencement Date. Such notice shall be accompanied by a payment in the amount of (i) 65% of the unpaid Annual Rent from the date of termination until the end of the term, (ii) the unamortized Allowance as of the date of the termination, (iii) the unamortized Broker commission as of the date of termination (iv) any recapture amounts due and owing to the Agency and (v) the unamortized Additional Allowance. In the event the Agency has not imposed a recapture as of the date of termination, it may still impose a recapture payment on Landlord and Tenant shall pay such amount whenever it becomes due and payable and this provision shall survive the termination of this Lease.

ARTICLE 3
RENT, ADDITIONAL RENT

Section 3.01. **Annual Rent.** The Project shall be constructed and delivered in three phases, Phase 1, Phase 2 and Phase 3. Initial Annual Rent shall be the product of \$10.05 per square foot

multiplied by the square footage of the Buildings. Commencing on the first year anniversary of the Full Rent Commencement Date, Annual Rent shall be increased by 1% over the Annual Rent in effect during the preceding Lease Year. It is anticipated the three Phases shall be delivered on different dates therefore Annual Base Rent shall commence as each Phase is delivered as set forth herein.

With respect to Phase 1, Tenant shall commence payment of Annual Rent five (5) months from the date Landlord delivers Phase 1 to Tenant. ("Phase 1 Commencement Date")

With respect to Phase 2, Tenant shall commence payment of Annual Rent on the date Landlord delivers Phase 2 to Tenant in accordance with the terms of this Lease. ("Phase 2 Commencement Date")

With respect to Phase 3, Tenant shall commence payment of Annual Rent on the date Landlord delivers Phase 3 to Tenant in accordance with the terms of this Lease. ("Phase 3 Commencement Date")

The date that all three Phases have been delivered to the Tenant shall be the "Full Rent Commencement Date".

Annual Rent Extension Terms. Annual Rent during each Extension Term if exercised shall continue to increase 1% per annum above the prior years' Annual Rent.

Reduction in Annual Rent. Tenant shall have the option at any time prior to the Term Commencement Date, pay to Landlord [or its designated contractor directly], in million dollar increments, such amounts to lower the Annual Rent. The maximum payment shall not exceed \$5,000,000. For every \$1,000,000 paid to Landlord [or its designated contractor directly] the Annual Rent shall decrease \$0.21 per square foot. In order to exercise this option, Tenant must provide Landlord with written notice, on or before April 1, 2022, of its intent to pay such sums to Landlord [or its designated contractor] with such payments being made prior to Term Commencement Date. Payments must be made in million dollar increments. Upon making such payment the parties shall, within 20 days of Landlord's [or its designated contractor directly] receipt of such payment, enter into an amendment to this Lease setting forth the new Annual Rent schedule.

Annual Rent shall be due on the first day of each calendar month during the Initial Term. Rent for any period of less than one month shall be apportioned based on the number of days in that month. Tenant will pay the Annual Rent and Additional Rent to the Landlord at 302 Washington Avenue Extension, Albany, New York 12203 or to such other person or at such other place as Landlord may designate in writing. Tenant shall pay the Annual Rent and Additional Rent promptly as and when the same shall become due and payable, without demand therefor and without abatement, deduction or setoff except as expressly provided in this Lease. In the event that Landlord does not receive the Annual Rent and all Additional Rent due hereunder within ten (10) days after its due date, Tenant shall pay to Landlord a late charge at a rate of one and one-half percent (1.5%) per month for each dollar overdue. Such late charge shall be deemed Additional Rent for all purposes under this Lease.

Section 3.02. **Additional Rent.** In addition to Annual Rent, Tenant shall pay "Additional Rent" which shall mean all sums of money payable by Tenant under this Lease other than Annual Rent. The Annual Rent and the Additional Rent are hereafter collectively referred to as the "Rent".

Section 3.03. **Monthly Administrative Fee.** Commencing on the Term Commencement Date, Tenant shall pay to Landlord a monthly fee equal to \$500 to administer the real estate tax collection and payment, Albany County Industrial Development Agency reporting requirements and collection of insurance premiums. The administrative fee shall be paid on the first day of each month during the term of the Lease along with the payment of rent.

Section 3.04. **Real Estate Taxes.** Landlord shall pay when due all real estate and school taxes and special assessments, business improvement district taxes, payment in lieu of taxes, and all other taxes, duties, charges, fees and payments imposed, assessed or levied upon, or arising in connection with the ownership, use, occupancy or possession of the Building and Premises or any part thereof during the term of the Lease ("Taxes"). With respect to all or any part of Taxes which falls within the Term, Tenant shall pay to Landlord when due, as Additional Rent, Tenant's Share of Taxes commencing on the Term Commencement Date. Tenant's Share is calculated to be 100.00 % of Taxes. Such Tenant's Share shall be paid by Tenant within thirty (30) days after receipt of an invoice therefore from Landlord which includes an itemized statement of the Taxes paid by Landlord and copies of the invoices for such Taxes received by Landlord. Failure of Landlord to provide such statement within the time prescribed shall not relieve Tenant of its obligations hereunder. Upon request of Landlord, Tenant's Share shall be paid by Tenant in monthly installments in such amounts as are estimated and billed by Landlord at the beginning of each twelve (12) month period commencing and ending on date designated by Landlord, each installment being due on the first day of each calendar month. At any time during each twelve (12) month period, Landlord may re-estimate Tenant's Share of Taxes and adjust Tenant's monthly installments payable thereafter during such twelve (12) month period to reflect more accurately Tenant's Share of Taxes. Within one hundred twenty (120) days (or such additional time thereafter as is reasonable under the circumstances), after the end of each such twelve (12) month period, the monthly installments paid or payable shall be adjusted between Landlord and Tenant, and Tenant shall pay Landlord or Landlord shall credit Tenant's account, as the case may be, within thirty (30) days of receipt of a statement from Landlord to Tenant, such amounts as may be necessary to effect adjustment to the agreed Tenant's Share. Failure of Landlord to provide such statement within the time prescribed shall not relieve Tenant of its obligations thereunder. Initial year Taxes are estimated at \$1.05 per square foot to the best of Landlord's knowledge.

At Landlord's option, however, Tenant shall pay the Taxes directly to the applicable taxing jurisdictions when due and shall send copies of paid receipts to the Landlord within 20 days from the date such payments are made.

Landlord will apply for a payment in lieu of tax agreement with the applicable municipal industrial development agency in accordance with the schedule attached hereto as Exhibit G ("Pilot Schedule").

Section 3.05. **Utility Charges.** Commencing on the Term Commencement Date and continuing throughout the Term of this Lease, the Tenant, at its sole cost and expense, shall arrange for and pay directly to the utility provider for electricity, water, sewer, gas, communications and all other

utility services to the portions of the Leased Premises as they are delivered to Tenant. For example, Tenant's obligations to pay utilities for Phase 1 shall commence on the date Phase 1 is delivered to Tenant but Tenant shall not be obligated to pay utilities for Phase 2 or Phase 3 until such Phases are delivered to Tenant. All such fees and charges shall be paid timely before the imposition of any late fees or penalties. Landlord shall not be liable in the event of interruption in the supply of any utilities. In the event there are utility charges for a particular Phase which has not yet been delivered to the Tenant the Tenant shall only be required to pay its proportionate share of the utility invoice based upon the phases delivered to Tenant upon receipt of such invoice.

Section 3.06. **Financial Statements.** Upon Landlord's written request, the Tenant shall promptly furnish Landlord with reasonable portions of Tenant's financial statements certified by Tenant as true and complete, which accurately reflect such party's current financial position. Notwithstanding, financial information shall not be required if Tenant is a publicly traded company. Landlord shall hold such financial statements as confidential and business propriety information of the Tenant and except for Landlord's lender, Landlord shall not release or distribute such financial statements without Tenant's prior written permission.

Section 3.07. **Janitorial Services/Trash Removal** Tenant shall provide, at its sole cost and expense, janitorial service to the Leased Premises, sufficient to maintain the Leased Premises in a Class A manner at all times. Tenant hereby covenants and agrees to handle, store and dispose of all Hazardous Materials generated within the Leased Premises in accordance with applicable federal, state and local and environmental and safety laws. Tenant shall, at its sole cost and expense, be responsible for removing all waste and recyclables from the Leased Premises for disposal by Tenant's waste contractor. In the event Tenant shall fail to comply with the provisions of this Section 3.07, Landlord may, upon three (3) Business Days' Notice, perform same and charge Tenant, as Additional Rent, the cost thereof, together with an administrative/overhead fee of fifteen percent (15%).

ARTICLE 4 PREPARATION FOR OCCUPANCY

Section 4.01 **Construction Landlord's Work.** (A) Landlord shall promptly commence, and shall pursue with due diligence until completion, construction of the Landlord's Work. Landlord's Work shall be the work set forth in the floor plans and specifications attached to this Lease as Exhibit D ("Landlord's Work"). Landlord shall pay for all of the cost of the Landlord's Work. Any changes to the Landlord's Work shall be paid by Tenant as Change Orders, as hereinafter defined. Landlord shall deliver each Phase of the Leased Premises with Landlord's Work substantially completed. Changes to the Landlord's Work shall be deemed change orders, to be paid for by Tenant. Landlord intends to complete construction of Landlord's Work with respect to Phase 1 on the Phase 1 Completion Date and to complete construction of Landlord's Work with respect to Phase 2 and Phase 3 on the Phase 2 and Phase 3 Completion Date, but this date may be extended for Tenant Delays (hereinafter defined). The Landlord shall not be liable in damages to Tenant for failure to substantially complete the construction of the Project and the Landlord's Work by the Phase 1 Completion Date or the Phase 2 and Phase 3 Completion Date, provided such failure is the result of a Tenant Delay.

Landlord agrees to use "Green Building Practices" in construction as such term is defined in

Exhibit H attached hereto and the Landlord and Tenant shall work together to identify the green components for construction.

Landlord agrees to work with National Grid to cause Vista Technology Park to be served by a second existing National Grid substation ("Redundant Power Feed"). The cost of the Redundant Power Feed is not included in Landlord's Work and shall be paid for by Tenant directly or deducted from the Allowance.

Landlord agrees to work with Tenant and National Grid to expeditiously process an interconnect application for this property.

(B) If the cost of construction of the Landlord's Work is increased as a result of any Change Orders (hereinafter defined) (i) requested by Tenant, or (ii) as a direct result of any delay caused by Tenant, then Tenant shall pay to Landlord the amount by which the cost and expense was increased by such Change Order, and/or delay, which payment shall be made on the date which is ten (10) Business Days after Landlord shall have delivered to Tenant a bill in reasonable detail specifying the cost of such Change Order and/or delay. Landlord shall obtain or cause to be obtained all building permits, licenses and other governmental approvals which may be required to permit the construction of the Landlord's Work. Promptly thereafter, Landlord shall commence and proceed with due diligence and without delay, to construct the Landlord's Work in accordance with the plans and specifications, in a good and workman like manner. The term "Change Order" as used in this section shall mean the costs incurred by the Landlord in connection with any change to the plans and specifications, including without limitation, construction costs and architectural and engineering fees associated with reviewing and revising the approved plans and specifications, plus overhead and profit [5% overhead and 5% profit], the increased costs of various trade contractors due to delay in completing the Landlord's Work, and costs associated with cancellation of materials already ordered.

(C) Tenant will give full cooperation in having available those persons who are necessary to settle problems arising out of job conditions. Tenant shall designate one or more representatives who shall have authority to bind Tenant as to all construction-related matters including, without limitation, ordering changes in the Work, provided that any Change Order shall be countersigned by a representative of Tenant; it is understood and agreed that Matt Savoie (the "Authorized Agent") shall have the authority to bind the Tenant to Change Orders resulting in any changes to the approved plans and specifications.

(D) Tenant shall have access to the Phase 1 thirty (30) days prior to the Phase 1 Substantial Completion Date for the installation of Tenant's Work. Tenant agrees it shall not interfere with or delay Landlord's Work.

(E) If the date of the respective Substantial Completion of Landlord's Work shall be delayed due to any Tenant Delay (hereinafter defined), Substantial Completion for such Phase shall be deemed to have been achieved on the Scheduled Completion Date and the period of time of the delay shall be added to the time in which the Landlord may perform its obligations. The term "Tenant Delay" shall include, without limitation, any of the following which delays the completion of the Landlord's Work:

(1) The Landlord shall provide in writing all questions and clarification as to scope of the plans and specifications. Tenant will then have seven (7) days to answer in writing for items on the critical path. Failure to provide responses within aforementioned number of days shall be a Tenant Delay.

(2) Delays due to -

- (a) Changes made by or on behalf of Tenant in Tenant's plans or in Landlord's Work;
- (b) Postponement of any Landlord's Work at Tenant's request or because of any Tenant's work required to be performed in advance of items of Landlord's Work so postponed;
- (c) Delays resulting from interference with Landlord's Work in the Leased Premises or relating to the Building by Tenant, its agents, servants or employees;
- (d) Commercial unavailability of any materials necessary to complete a Change Order;
- (e) Delay due to Tenant failing to timely supply the design information for equipment to be incorporated into the building; or
- (f) Any other failure of Tenant to comply with any of its obligations under this Lease.

Upon receipt by the Tenant of notice of the occurrence of a delay under item (2)(d) above, the Tenant shall have the right within ten (10) Business Days after receipt of such notice to substitute available materials in order to avoid a Tenant Delay, provided the Tenant pays to the Landlord the net increase in cost caused by such substitution in accordance with Section 4.01(B) above. In any event, the Landlord's Work shall be deemed Substantially Completed (as hereinafter defined) when the Tenant occupies the Leased Premises or any part thereof.

(F) In the performance of Landlord's Work, Landlord may substitute materials of equal or better quality.

Section 4.01(A) Construction Tenant's Work/Allowances: Any work required by Tenant for the use and operation of the Project and which is not included in the Landlord's Work shall be deemed to be Tenant's Work, which shall be completed at Tenant's sole cost and expense. Article 13 of this Lease shall apply with respect to Tenant's Work. Tenant shall proceed with due diligence toward the completion of Tenant's Work. Landlord and Tenant shall cooperate and work together in connection with allowing Tenant access to the Building for the purpose of performing Tenant's Work.

Landlord shall provide an allowance to Tenant in the amount of \$3,400,000 ("Allowance") to be used by Tenant in completing Tenant's Work. Landlord shall pay the Allowance to Tenant upon

the completion of Tenant's Work, Tenant occupying the Project and paying the first month Annual Rent and providing lien waivers from all contractors, subcontractors and materialmen. If Landlord fails to pay the Allowance within 30 days from the date such Allowance is due, Tenant may offset Annual Rent in an amount equal to the unpaid Allowance.

Upon request by Tenant on or before February 1, 2022 ("Additional Allowance Notice Date"), Tenant shall have the option to increase the Allowance up to a maximum of \$2,000,000 ("Additional Allowance"). Tenant shall notify Landlord of the exact amount of the Additional Allowance on the Additional Allowance Notice Date. The parties agree the Additional Allowance shall be amortized over a ten (10) year term and at 4.5% interest rate. Such payments shall be considered additional rent and shall be paid by Tenant on a monthly basis on the first day of each month of the term of the Lease commencing on the Full Rent Commencement Date and continuing for ten (10) years. There shall be no increase in payments over the ten (10) year repayment period.

Tenant agrees to use BBL Construction Services LLC ("BBL") to perform Tenant's Work. Tenant and BBL will enter into a separate agreement governing the terms and conditions of their relationship vis a vis Tenant's Work.

Notwithstanding anything set forth herein to the contrary, however, Landlord shall not be responsible to obtain any required operational permits for Tenant's business.

Section 4.02 *Substantial Completion/Term Commencement Date*

Landlord anticipates Substantial Completion of Phase 1 on or before July 31, 2022 ("Phase 1 Completion Date"). If Landlord fails to achieve Substantial Completion and delivery of the Phase 1 or before the Phase 1 Completion Date for reasons other than Tenant Delay, Landlord shall provide, at its option, either (i) a credit against Rent or (ii) payment equal to \$15,000 per day for each day it fails to achieve Substantial Completion as of the Phase I Completion Date.

Landlord anticipates Substantial Completion of Phases 2 and 3 December 31, 2022 ("Phase 2 and Phase 3 Completion Date"). If Landlord fails to achieve Substantial Completion and delivery of Phase 2 and Phase 3 on or before the Phase 2 and Phase 3 Completion Date for reasons other than Tenant Delay, Landlord shall provide, at its option, either (i) a credit against Rent or (ii) payment directly to Tenant equal to \$15,000 per day for each day it fails to achieve Substantial Completion as of the Phase 2 and Phase 3 Completion Date.

The date the Landlord's Work is substantially complete with respect to each Phase of the Project shall be the date when Landlord delivers possession of each Phase to Tenant, free of all tenants and occupants and when:

- (i) the Landlord's Work with respect to the Phase being delivered has been substantially completed (except for Punch List Items, as defined in Section 4.03(B)) in accordance with the provisions of this Lease; and
 - (ii) Landlord has obtained a certificate of occupancy or comparable governmental authorization (temporary or permanent) with respect to the Phase being delivered permitting Tenant's use and enjoyment of such Phase of the Project for the purposes authorized by the provisions of this Lease. (Notwithstanding,
-

however, no certificate of occupancy shall be required if one cannot be obtained prior to Tenant completing Tenant's Work (defined herein).

The "Term Commencement Date" shall be the date of substantial completion of the Landlord's Work with respect to Phase 1.

Section 4.03. ***Punch List Items.***

(A) Within thirty (30) days after the date the Landlord's Work with respect to a particular Phase is Substantially Completed in accordance with Section 4.02, the Tenant shall deliver to Landlord a list of uncompleted Punch List Items (as hereinafter defined) for the Landlord's Work that Landlord is obligated by the provisions of this Lease to complete. Landlord shall proceed with due diligence to complete the Punch List Items, subject to reasonable delays as a result of seasonal conditions.

(B) The term "Punch List Items" shall mean details of construction, work awaiting seasonal opportunity, decoration and mechanical and electrical adjustments which, in the aggregate, are minor in character and do not materially or unreasonably interfere with Tenant's use or enjoyment of the Leased Premises in accordance with the provisions of this Lease and will not unreasonably interfere with Tenant's ability to commence or complete Tenant's Work.

Section 4.04. ***Tenant's Rights of Access.***

(A) During the course of the Landlord's Work, the Tenant, its agents, employees and contractors, may enter the Leased Premises at all reasonable times for the purposes of inspection and, as soon as possible after the Landlord's Work is Substantially Completed, for the purpose of installing any Tenant improvements, fixtures and other equipment not included in the Work to be performed by Landlord (the "Tenant Installation") and which Landlord has approved in accordance with Section 13.02A without being deemed thereby to have taken possession. Tenant shall perform Tenant's Work at Tenants sole and cost and expense. Tenant agrees that during said period (a) Landlord shall have no liability to Tenant for damage to any property of Tenant stored on the Leased Premises except for damages caused by negligent acts or omissions of Landlord or its employees or agents which are not otherwise covered by Tenant's insurance, (b) Tenant shall not interfere with the Landlord's Work, (c) Tenant shall indemnify Landlord and hold Landlord harmless from and against any claims, losses, damages and expenses arising out of the negligent acts or omissions of Tenant or its employees or agents in the Project. Any such prior entry to the Leased Premises shall be at the Tenant's sole risk and (d) prior to entering the Property, Tenant shall provide Landlord with insurance as required in Section 10.02A.

(B) Tenant's activity within the Leased Premises prior to the Term Commencement Date or Tenant's acceptance of possession of the Leased Premises shall not be deemed a waiver of any of the obligations under this Article to be performed by Landlord, including the completion of Punch List Items. However, after entering into possession of any part of the Leased Premises, Tenant shall promptly bring to Landlord's attention by delivery of written notice identifying any defects in construction which come to Tenant's attention within the first two (2) months following Tenant's occupancy, except for latent defects for which Tenant shall have a period of one year following Tenant's occupancy to identify in writing to Landlord, and Landlord shall promptly correct same at Landlord's expense.

Section 4.05. **Condition of Construction.** All construction work required or permitted by this Lease, whether by Landlord or Tenant, shall be done in a good and workmanlike manner using new, first class materials and shall be in compliance with all applicable Laws. Landlord shall also obtain all licenses (except all licenses and approvals required by the Tenant to operate its business from the Leased Premises), temporary and permanent certificates of occupancy and other governmental approvals required to permit the use of the Leased Premises in accordance with this Lease except if such items cannot be obtained because Tenant has not completed Tenant's Work.

**ARTICLE 5
ALLOWABLE USE**

Section 5.01. **Landlord's Representations Regarding Use.** Landlord represents and warrants that the Leased Premises and the uses thereof for the purposes specified in this Lease are, or on the Term Commencement Date will be, in conformity with all applicable Laws, and that Landlord will deliver possession of the Leased Premises to Tenant, free of all tenants and occupants.

**ARTICLE 6
ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

Section 6.01. The Landlord will apply for benefits from the Albany County Industrial Development Agency ("Agency"), with respect to the construction, operation and assessment of the Leased Premises. The Agency offers an "enhanced" payment in lieu of tax program along with abatements of sales tax with respect to the construction of the Project. Landlord agrees to promptly apply for such enhanced benefits and tax exemptions. The payment in lieu of tax agreement does not fix the assessment with respect to the Project but will reduce the percentage of real estate taxes to be paid with respect to the Project over the period of the agreement. There are certain reporting requirements imposed by the Agency and required pursuant to New York State law. During such period of time as the Agency has an interest in the Leased Premises the Tenant agrees to comply with such requirements as are typically imposed by the Agency and/or required by New York State Law regarding the listing or posting of job openings at the Leased Premises on transactions of this type and annual employment reporting as are typically required by the Agency on transactions of this type. During the Term of the Lease, Tenant shall also provide to the Landlord, upon request, information regarding the occupancy of the Leased Premises so that the Agency may calculate the payment in lieu of taxes due, if any, with respect to the occupancy of the Leased Premises. The Landlord shall provide specific information and forms to the Tenant regarding the particular requirements. The Tenant has provided Landlord with specific employment estimates regarding the operation by Tenant at the Leased Premises during the term of the Pilot Schedule. In the event Tenant fails to maintain such employment levels and there is a recapture of benefits imposed by the Agency, the Tenant shall be responsible to pay when due, such recapture payments. The Tenant shall indemnify, defend and hold harmless with respect to any and all recapture payments and this provision shall survive the expiration or earlier termination of this Lease.

**ARTICLE 7
RIGHT OF FIRST OFFER/ RIGHT OF FIRST REFUSAL TO PURCHASE THE
LEASED PREMISES AND PURCHASE OPTION**

Section 7.01 **Right of First Offer.** Provided that Tenant is not in default under the Lease and that this Lease remains in full force and effect, if at any time from and after the date of the Full Rent Commencement Date, the Landlord shall desire to transfer the ground leasehold interest and improvements in and to the Premises to an unrelated third party, the Landlord shall deliver to the Tenant a letter setting forth the asking price, terms and conditions of the proposed transfer which Landlord is willing to accept (the "Landlord Terms"). The Tenant shall have a right of first offer to purchase the Leased Premises and Tenant may, within thirty (30) days after receipt of the Landlord Terms, elect to purchase the ground leasehold interest and improvements in the Leased Premises in accordance with the Landlord Terms by delivering a written acceptance to Landlord. If the Tenant delivers timely acceptance to Landlord of Landlord Terms, the parties shall proceed to contract and closing within ninety (90) days thereafter. If the Tenant fails to deliver written acceptance of the Landlord Terms within twenty (20) days of receipt, the Tenant's right of first offer shall automatically be terminated. Notwithstanding, if the transfer to an unrelated third party doesn't close within six (6) months after Tenant's right of first offer terminates, then, Tenant's right of first offer shall be restored. This right of first offer shall not apply to a mortgagee or purchaser in foreclosure or subsequent sale by such mortgagee.

Section 7.02. **Right of First Refusal to Purchase the Premises.** Provided Tenant is not in default under the terms of this Lease, Tenant shall have the right of first refusal to purchase the ground leasehold interest and improvements in the Premises. If the Landlord shall receive an unsolicited offer for the purchase of the ground leasehold interest in the Premises which Landlord shall desire to accept (any such offer may include a letter of intent which has not been fully negotiated, the "Offer"), the Landlord shall deliver to the Tenant a notice setting forth the asking price, terms and conditions and proposed purchase agreement ("Sale Terms"). Tenant shall have a period of thirty (30) days from receipt of the Sale Terms in which to deliver to Landlord a signed purchase agreement to purchase the ground leasehold interest in the Premises upon the Sale Terms and the parties shall proceed to closing within ninety (90) days thereafter. If the Tenant fails to deliver the signed purchase agreement within thirty (30) days of receipt of the Sale Terms, the Tenant's right of first offer shall automatically be terminated. Notwithstanding, if the transfer to an unrelated third party who made such unsolicited offer doesn't close within six (6) months after Tenant's right of first refusal terminates, then, Tenant's right of first refusal shall be restored. This right of first refusal shall not apply to a mortgagee or purchaser in foreclosure or subsequent sale by such mortgagee.

Section 7.03 **Option to Purchase the Premises.** Provided Tenant is not in default under the terms of this Lease, Tenant shall have the option to purchase the ground leasehold interest and improvements in and to the Premises after the 12th year anniversary of the Full Rent Commencement Date. The option price shall be the greater of (i) Fair Market Value [defined herein] of the Premises when the option is exercised or (ii) an amount equal to the Annual Rent when the option is exercised divided by a capitalization rate of 5.5%. Tenant shall provide ninety (90) days prior written notice to Landlord of its desire to exercise this option. Once exercised, Tenant shall use its reasonable best efforts to close on the property (90) days from the date of the notice but no later than 120 days from the date of the notice. Tenant shall be responsible to pay, in addition to the option price, all of Landlord's prepayment penalties and fees, swap termination fees, in connection with any existing mortgage loan. Tenant shall pay all transfer taxes due as a result of this Option to Purchase.

For purposes herein the Fair Market Value shall be the then fair market value for similar space in buildings in the Capital District (the "**Market Area**") (with similar tenant improvements and tenants of similar credit worthiness), which Fair Market Value shall be determined as follows:

- (a) The Fair Market Value ("Market Value") shall be proposed by Landlord in good faith within twenty (20) days after receipt of Tenant's notice that it intends to exercise its option to purchase the Premises (the "**Landlord's Proposed Market Value**"). Landlord's Proposed Market Value shall be the Market Value unless Tenant notifies Landlord, within twenty (20) days of Tenant's receipt of Landlord's Proposed Market Value, that Landlord's Proposed Market Value is not satisfactory to Tenant ("**Tenant's Rejection Notice**").
- (b) If Tenant delivers Tenant's Rejection Notice and the Market Value is not otherwise agreed upon by Landlord and Tenant within forty (40) days after Landlord's receipt of Tenant's notice that it intends to exercise its option to purchase the Premises, then the Market Value shall be determined by the following appraisal procedures:

1. Within ten (10) days of the expiration of said forty (40) day period Tenant and Landlord shall give each other notice which shall specify the name and address of the Qualified Appraiser (as defined below) designated by such party (the "**Tenant's Appraisal Notice**" and the "**Landlord's Appraisal Notice**"). If a party (the "**Non-Designating Party**") shall fail to timely give to the other party (the "**Designating Party**") such written notice of its designated Qualified Appraiser, then the Designating Party shall send a written notice to the Non-Designating Party stating that, if the Designating Party shall not receive a written notice from the Non-Designating Party of its Qualified Appraiser within seven (7) days following the date of said notice to the Non-Designating Party, then the determination of Market Rent by the designated Qualified Appraiser of the Designating Party shall be the Market Rent for the applicable Extended Term and be conclusive and binding on Landlord and Tenant. Such two Qualified Appraisers shall, within thirty (30) days after the designation of the Qualified Appraisers, make their determinations of the Market Value in writing and give notice thereof to each other and to Landlord and Tenant. Such two (2) Qualified Appraisers shall have thirty (30) days after the receipt of notice of each other's determination to confer with each other and to attempt to reach agreement as to the determination of the Market Value. If such Qualified Appraisers shall concur in their determination, they shall give notice thereof to Landlord and Tenant and the amount agreed to by both Qualified Appraisers shall be final and binding upon Landlord and Tenant. If such Qualified Appraisers shall fail to concur as to such determination within said thirty (30) day period, they shall give notice thereof to Landlord and Tenant, and thereafter the two (2) Qualified Appraisers shall immediately designate a third Qualified Appraiser. If the two Qualified Appraisers shall fail to agree upon the designation of such third Qualified Appraiser within ten (10) days after said thirty (30) day period, then they or either of them shall give notice of such failure to agree to Landlord and Tenant, and if Landlord and Tenant fail to agree upon the selection of such third Qualified Appraiser within ten (10) days after the Qualified Appraiser(s) appointed by the parties give notice as aforesaid, then

either party on behalf of both may apply to the American Arbitration Association or any successor thereto, or on his or her failure, refusal or inability to act, to a court of competent jurisdiction, for the designation of such third Qualified Appraiser.

2. For purposes of this Lease, a “**Qualified Appraiser**” shall be an independent real estate appraiser or consultant who shall be a current member of either a member of either M.A.I. or A.S.R.E.C., and have had at least ten (10) years continuous experience in the business of appraising commercial real estate similar to the Property in the Market Area where the Property is located.

3. The third Qualified Appraiser shall conduct such hearings and investigations as he or she may deem appropriate and shall, within ten (10) days after the date of his or her designation, make a determination of the Market Value in writing and give notice thereof to the other Qualified Appraisers and to Landlord and Tenant (i.e., there shall be three determinations of Market Value). The Market Value shall be the average of the two determinations that are closest in value.

Each party shall pay fees, costs and expenses of the Qualified Appraiser selected by it, its own counsel fees, and one-half (1/2) of all other expenses and fees of any such appraisal.

ARTICLE 8 USE OF LEASED PREMISES

Section 8.01. **General Uses.** Tenant shall have the right to use the Leased Premises for a manufacturing, warehouse and commercial office, and all other uses incidental and related thereto; including hydrogen storage and distribution and for no other use without the prior written consent of the Landlord in the exercise of Landlord’s sole and absolute discretion. If any government license or permit shall be required for the proper and lawful conduct of Tenant’s business or other activity carried on in the Leased Premises, and if the failure to secure such license or permit, might or would, in any way effect Landlord, then Tenant, at Tenant’s expense, shall duly procure and thereafter maintain such license or permit and comply with the requirements of each such license or permit.

Landlord represents the local municipality agrees Tenant may use Hydrogen at the Leased Premises both outside and inside at volumes specified by Tenant.

Tenant shall have access to the Leased Premises twenty-four (24) hours a day, seven days a week throughout the Term of the Lease.

ARTICLE 9 REPAIRS AND MAINTENANCE

Section 9.01. (A) **Tenant’s Repairs.** Any and all repairs, maintenance and replacements required at the Project and not included in the Landlord Repairs set forth in Section 9.01(B) shall be deemed to be Tenant’s repair, maintenance and replacement obligation. In connection therewith, Tenant shall, at its expense, keep and maintain the interior, nonstructural portions of the Leased Premises including but not limited to all mechanical systems and plumbing hot water heater, fire extinguishers, sprinkler system, elevator maintenance, extermination services, and all HVAC

equipment, mechanical systems, in good condition and repair at all times. Tenant shall, at its expense, keep and maintain Tenant's Work and signage in good condition and repair at all times. Tenant shall keep and maintain the exterior including parking areas and driveways and drive aisles in good condition and repair. The Landlord will provide the scope and specification of the paving detail which shall demonstrate the quality and workmanship of a Class A finished product for a period of five (5) years. Any replacements due to latent defect to the pavement will be the responsibility of the Landlord during the first sixty (60) months. All such repairs and necessary replacements shall be in quality and class equal to the original work and materials. Landlord shall provide Tenant with any owner's manuals and manufacturer's warranties in Landlord's possession for any equipment that Tenant is responsible to maintain and/or repair.

With respect to the heating ventilating and air conditioning ("HVAC"), at all times during the term of this Lease and any extensions thereof, Tenant shall be responsible for the maintenance, repair and replacement of the HVAC system and shall maintain a quarterly service agreement with a reputable HVAC contractor acceptable to Landlord, and shall provide a copy of such agreement within thirty (30) days of occupancy of the Premises or the Tenant may elect to self-perform the HVAC maintenance and repair. The Landlord will have the right to audit Tenant's HVAC maintenance records, upon written request, and be assured the work is being conducted correctly. Each year during the term, Tenant shall provide Landlord with a current copy of said contract. Tenant's failure to maintain such contract shall be considered a default under this Lease. If Tenant fails to maintain such contract, Landlord may, but shall not be obligated to obtain a contract and the cost of same shall be considered additional rent, payable by Tenant upon receipt of an invoice.

(B) **Landlord Repairs.** Landlord shall keep and maintain the roof and structural portion (footings, foundations and load-bearing columns) of the Building, all other repairs, maintenance and replacements required with respect to the Leased Premises shall be Tenant's obligation at its sole cost and expense. If Tenant fails to keep and maintain and replace when necessary any portion of the Leased Premises, Landlord may, at its option, make such repairs at Tenant's sole cost and expense. Such amounts shall be deemed additional rent payable by Tenant within 30 days from the date of invoice by Landlord. If in Landlord's reasonable opinion any damage or destruction requiring repair or replacement is caused by any fault, negligence, act, or omission of Tenant or Tenant's agents, employees, subcontractors or vendors, Landlord shall nevertheless make the repair and Tenant shall pay to Landlord, as additional rent, immediately upon demand, the cost therefore together with an administrative/overhead fee of five percent (5%). Landlord shall not be responsible for the maintenance and repair of Tenant's Work.

ARTICLE 10 FIRE AND OTHER CASUALTY-INSURANCE

Section 10.01. *Damage or Destruction.*

(A) The Tenant must give the Landlord prompt written notice of fire, accident, damage or dangerous or defective condition on or about the Leased Premises. If any portion of the Building (to include any improvements to the Leased Premises, but excluding Tenant's Owned Property, as defined in Section 13.03), is damaged by fire, earthquake, flood or other casualty, or by any other cause of any kind or nature (the "Damaged Property") and the Damaged Property can, in the

reasonable opinion of Landlord be repaired within two hundred forty (240) days from the date of receipt of insurance proceeds and provided that such proceeds are made available by Landlord's Mortgagee, Landlord shall proceed promptly after receipt of such insurance proceeds to commence making such repairs so as to restore the Damaged Property to the condition it was in prior to the damage. Except as hereinafter provided in Section 10.01(E), this Lease shall not terminate, but Tenant shall be entitled to a pro rata abatement of Annual Rent and Additional Rent payable during the period commencing on the date of the damage and ending on the date the Damaged Property is repaired as aforesaid and possession of the Leased Premises is delivered to Tenant. The extent of rent abatement shall be based upon the portion of the Leased Premises rendered untenantable, unfit or inaccessible for use by Tenant for the purposes stated in this Lease during such period. Notwithstanding, however, if it is reasonably determined that the damage renders the Leased Premises unfit for Tenant's use for its entire purpose, then the entire rent during the period of repair shall be abated.

(B) If Landlord notifies Tenant that the Damaged Property cannot be completed within two hundred forty (240) days from the date the damage occurred, or the Lease term will expire within one (1) year from the date of the damage and Tenant fails to extend the term in accordance with Section 2.02 within thirty (30) days from the date of the damage, then either Landlord or Tenant may terminate this Lease by notice to the other party within thirty (30) days from the date the damage occurred. Upon termination, Annual Rent and Additional Rent shall be apportioned as of the date of the termination and all prepaid Annual Rent and Additional Rent shall be refunded to Tenant within thirty (30) days after the date of termination.

(C) Notwithstanding anything contained in Section 10.01(A) and (B) above to the contrary, there shall be no obligation on the part of Landlord to repair the Damaged Property if, the damage occurred during the last twelve (12) months of the term of this Lease unless Tenant, within thirty (30) days after the damage, exercises its option to renew pursuant to Section 2.02 hereof.

(D) If neither party exercises its option to terminate hereunder Landlord shall, with due diligence, repair the Damaged Property, except for Tenant's Owned Property and Tenant's Work, as a complete architectural unit of substantially the same usefulness, design and construction existing immediately prior to the damage. Tenant shall be entitled to a pro rata abatement of Annual Rent in the manner and to the extent provided in Section 10.01(A).

(E) If by operation of this Article Landlord undertakes but fails to complete repairs of the Damaged Property (except for Tenant's Owned Property), as required by the provisions of this Article and deliver possession of the Leased Premises to Tenant within two hundred forty (240) days from the date the damage occurred for any reason other than Excusable Delay or a delay caused by Tenant, Tenant may, upon written notice to Landlord and the holder of any mortgage encumbering the Building who shall have theretofore given Tenant an address to which such notices under this Lease are to be sent, terminate this Lease. If this Lease is terminated, then the Term shall end on the date specified in the notice and Annual Rent and Additional Rent shall be apportioned as of the date of the termination and all prepaid Annual Rent and Additional Rent shall be refunded to Tenant within thirty (30) days after the date of termination.

(F) Nothing in this Section 10.01 shall require Landlord to restore, repair, or replace

any Tenant's Owned Property or Tenant's Work.

Section 10.02. **Insurance.**

(A) Tenant Insurance. Throughout the Initial Term and any Extension Term, Tenant shall carry Commercial General Liability Insurance (ISO CG 00 01 - 1993 Form or its equivalent) with respect to the Leased Premises written on an occurrence form endorsed to apply on a Primary basis including a Per Location Aggregate applicable to the Leased Premises only for the Term of this Lease. Such insurance shall be from a responsible and solvent insurance company authorized to do business in the State of New York with an A.M. Best Rating of A- or better and shall also cover the Tenant's contractual obligations set forth in this Lease. The Commercial General Liability policy shall name Landlord (and property manager, if any) as additional insured on a primary and noncontributing basis (Managers or Lessors of Premises CG 2032 or its equivalent). The policy shall contain a Waiver of Subrogation in favor of the Landlord.

Such insurance shall be provided in amounts not less than the following which minimum coverage requirements may be periodically revised by Landlord in the exercise of its reasonable discretion with deductibles reasonably acceptable to Landlord (the Tenant is responsible for payment of any applicable deductibles):

<u>Coverage</u>	<u>Limits of Liability</u>
Bodily Injury & Property Damage Each Occurrence Limit	\$2,000,000.00
General Aggregate Limit	\$4,000,000.00 [with a minimum of \$5,000,000 excess liability]
Products/Completed Operations Aggregate Limit	\$4,000,000.00
Personal/Advertising Injury Occurrence Limit	\$2,000,000.00
Fire Damage (Any One Fire)	\$100,000.00
Medical Expense (Any One Person)	\$5,000.00

Prior to the Term Commencement Date, Tenant shall provide a certificate of insurance to the Landlord evidencing coverages in compliance with the above requirements. The certificate of insurance shall provide thirty (30) days advance written notice to the Landlord in the event of the cancellation, change and/or non-renewal of the coverages certified. The certificate of insurance shall be renewed and submitted to the Landlord annually at least thirty (30) days prior to the expiration of Tenant's then current commercial general liability insurance policy for the duration of the Term of this Lease.

During the Term of this Lease, Tenant shall also carry all risk property insurance covering Tenant's Owned Property from responsible, solvent insurance companies authorized to do business in the State of New York.

Tenant shall also carry Workers' Compensation insurance including Employers Liability in compliance with New York Statutory Limits.

If Tenant fails at any time to take out, pay for, or maintain and deliver certificates or other evidence of insurance acceptable to Landlord, then Landlord without waiving or releasing Tenant



from any obligation of Tenant contained in this Lease, may (but shall not be obligated to) take out, pay for and maintain any of the insurance policies provided for in this Lease and any sums paid and costs incurred by Landlord in so doing, together with interest thereon at the Lease Interest Rate shall from the date of such expenditure by Landlord until payment in full, be deemed Additional Rent.

(B) Landlord Insurance. Throughout the Initial Term and any Extension Term, Landlord shall for the benefit of itself, its mortgagee and, to the extent applicable, Tenant, obtain the following insurance from responsible, solvent insurance companies authorized to do business in the State of New York.

(i) Commercial Property Insurance, which shall at a minimum, cover the perils insured under an ISO for CP 1030 or its equivalent - All Risks Property Insurance coverage (including Flood and Earth Movement if necessary) covering the Leased Premises in an amount or amounts not less than the full replacement cost of the Building;

(ii) All risk insurance covering loss of rental in an amount not Less than Annual Rent for the Building for a period of one year;

(iii) Comprehensive General Liability insurance with a combined Single limit of liability of at least \$2,000,000 with excess liability policy of a minimum of \$5,000,000; and

(iv) Such other insurance coverages and in such amounts as Landlord's Mortgagee and the applicable industrial development agency may reasonably require.

Tenant shall pay Landlord's insurance premiums within 30 days' notice by Landlord with respect to such payment. Such amounts shall be considered additional rent. Tenant shall also be responsible to pay any deductibles when due in the event of a claim.

Copies of insurance certificates shall be provided to Tenant.

(C) Mutual Release. Landlord and Tenant each hereby releases the other, its officers, directors, members, employees and agents, from liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property to the extent covered by valid and collectable insurance with standard extended coverage endorsement, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. However, this release shall apply only to loss or damage:

(i) Actually recovered from an insurance company; and

(ii) Occurring during the period of time for which the releasor's insurance policies shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the releasor to recover thereunder. Landlord and Tenant each agree that any insurance policies carried by each of them respectively and covering the Leased Premises or Tenant's Owned Property will

include the clause or endorsement referred to above as long as the same be obtainable without extra cost, or, if extra cost shall be charged therefore, so long as the other party pays such extra cost. If any extra cost shall be chargeable therefore, each party shall promptly advise the other of the amount of the extra cost. Landlord shall look solely to the proceeds of its respective casualty insurance policy to compensate it for any such loss, damage or destruction, except for any negligent or willful act or omission not covered by insurance and attributable to Tenant or any of its respective agents, invitees, licensees, contractors or employees for which Tenant shall remain responsible. Tenant shall look solely to the proceeds of its respective casualty insurance policy to compensate it for any such loss, damage or destruction, except for any negligent or willful act or omission not covered by insurance and attributable to Landlord or any of its respective agents, invitees, licensees, contractors or employees for which Landlord shall remain responsible.

(D) Tenant Release. Notwithstanding anything to the contrary contained herein, Tenant hereby releases Landlord from liability for damage or destruction to the Tenant's Owned Property so long as they are not caused by acts or omissions of Landlord, its contractors, subcontractors and their respective invitees, employees or agents; provided, however, such release shall be in force and effect only in respect of damage or destruction covered by standard policies of fire insurance with extended coverage.

ARTICLE 11 INDEMNIFICATION

Section 11.01. **Indemnification.** (A) Subject to the provisions of Section 10.02, Tenant indemnifies, defends, and holds Landlord harmless from claims for personal injury, death, or property damage occurring in or about the Leased Premises to the extent caused by the negligence or willful misconduct of Tenant, its agents, employees, or invitees. In the event the Landlord, without fault on its part, is made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all Landlord's costs, expenses and reasonable attorney fees.

(B) Landlord indemnifies, defends, and holds Tenant harmless from claims for personal injury, death, or property damage occurring in or about the Leased Premises that are caused by the negligence or willful misconduct of Landlord, its agents, employees, or invitees. In the event the Tenant, without fault on its part, is made a party to any litigation commenced by or against Landlord, then Landlord shall protect and hold Tenant harmless and shall pay all Tenant's costs, expenses and reasonable attorney fees.

(C) Notwithstanding paragraph (A) and (B) above, the parties release each other from any claims either party ("Injured Party") has against the other to the extent the claim is covered by the Injured Party's insurance or the insurance the Injured Party is required to carry under Section 10.02 above, whichever is greater and provided that such policy is in fact, in effect at the time of the injury or damage.

ARTICLE 12 CONDEMNATION

Section 12.01. **Taking-- Lease Ends.** If at any time during the term of this Lease any portion of the Building shall be so taken which renders the Building unsuitable for Tenant's use in either event which is the result of a taking for any public or quasi-public use, under any statute or by right of eminent domain, then the Tenant shall have the right by written election within thirty (30) days following the date of said taking to terminate this Lease and this effective date of termination shall be the later of such vesting of title or Tenant's vacating the Leased Premises, whichever occurs earlier, except as provided in Section 12.03, and the Annual Rent and Additional Rent shall be apportioned and paid, or refunded, as the case may be, to such date.

Section 12.02. **Taking -- Lease Continues.** If it is reasonably determined by Tenant that the portion of the Building remaining after a taking enables Tenant to continue to use the Leased Premises for its entire purposes, shall be taken this Lease shall remain unaffected, except that Tenant shall be entitled to a pro rata abatement of Annual Rent and Additional Rent based upon the proportion of the area of the Building that was so taken bears to the area of the Building, immediately prior to such taking.

Section 12.03. **Temporary Taking.** If the use and occupancy of the whole or any part of the Leased Premises is temporarily taken for a public or quasi-public use for a period in excess of twelve (12) months or less than the balance of the lease term or any extension thereof, Tenant shall be entitled to a pro rata abatement of Annual Rent and Additional Rent, equitably adjusted as to the portion of the Leased Premises temporarily taken until such temporary taking has ceased.

Section 12.04. **Landlord's Award.** Landlord shall be entitled to receive the entire award or awards in any condemnation proceeding without deduction therefrom for any estate vested in Tenant and Tenant shall receive no part of such award or awards from Landlord or in the proceedings except as otherwise expressly provided in this Article. Subject to the foregoing, Tenant hereby assigns to Landlord any and all of Tenant's right, title and interest in or to such award or awards or any part thereof.

Section 12.05. **Tenant's Award.** If there is a taking hereunder, Tenant shall be entitled to appear, claim, prove and receive in the condemnation proceeding a separate award for (1) the value of Tenant's Personal Property (hereinafter defined) that are damaged, destroyed or taken hereunder; and (2) the cost of relocation; provided none of the above shall affect or impair Landlord's award.

Section 12.06. **Restoration by Landlord.** If there is a taking hereunder and this Lease is continued, and provided that Tenant is not in default under the Lease, Landlord shall, to the extent and upon receipt of the available condemnation proceeds, proceed with reasonable diligence to repair, replace and restore as closely as possible to that which existed immediately prior to the taking the Leased Premises to include the Building, and the Leased Premises as a complete architectural unit of substantially the same proportionate usefulness, design and construction (excluding Tenant's Owned Property as hereinafter defined).

Section 12.07. **Definitions.** Taking by condemnation or eminent domain hereunder shall include the exercise of any similar governmental power and any sale, transfer or other disposition of the Building or Land in lieu or under threat of condemnation.

**ARTICLE 13
ALTERATIONS AND IMPROVEMENTS**

Section 13.01. ***Tenant's Changes - - No Approval***

Tenant may place and replace Tenant's Personal Property in the Leased Premises as it may desire at its own expense without Landlord's consent. Tenant shall not alter, improve, replace or change the Building or the Leased Premises, except in accordance with Section 13.02.

Section 13.02. ***Tenant's Changes -- Landlord's Approval.***

(A) Except with respect to non-structural changes which will be defined as changes which do not affect the structure, roof or building mechanicals or require municipal permits or approvals, and which shall be permitted upon notice to Landlord but without Landlord's consent, Tenant shall not make any alterations without Landlord's prior written consent.

(B) All alterations made under this Section 13.02 shall be at the sole cost and expense of Tenant. All alterations, additions and improvements made or caused to be made by Tenant shall be completed in a good and workmanlike manner. Such alterations, additions, or improvements shall become the absolute property of Landlord at the expiration or sooner termination of this Lease without the payment of any consideration therefor, unless removed by Tenant (and any damage to the Building is repaired by Tenant contemporaneous with said removal) prior to the expiration or sooner termination of this Lease. In the event Landlord's consent is required, all permits and approvals, plans and specifications will be required to be reviewed and approved by Landlord. All alterations shall be made by Tenant in accordance with applicable laws, rules, regulations and orders. Tenant shall obtain all required permits and approvals prior to making any alterations.

(C) During the course of making any alterations or improvements approved by Landlord, Tenant shall maintain or cause to be maintained adequate worker's compensation insurance covering all persons employed in connection with the work and builder's risk insurance. In addition all contractors entering the Premises shall provide Landlord with adequate liability insurance naming the Landlord as an additional named insured.

(D) Tenant shall not permit any mechanic's lien or other similar lien to be filed against the Project or against Landlord's interest in the same by reason of any work, labor, services or materials supplied for any alteration or improvement or other work performed by or on behalf of Tenant. If any such lien shall at any time be filed against the Project, Tenant shall, within thirty (30) days after written notice from Landlord (or such shorter period as Landlord's lender shall require), cause such lien to be discharged of record, by payment, bond, or court order. If Tenant fails to discharge such lien within such period referenced above, then, in addition to (and not in lieu of) any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge such lien. In such event, Landlord shall be entitled to be reimbursed by Tenant for any

payment of Landlord's costs and expenses in discharging such lien, (including without limitation, legal fees and disbursements) together with interest thereon at a fluctuating rate per annum equal to the prime rate of interest in effect from time to time as announced by the Wall Street Journal (or any successor thereto) plus three (3%) percent, computed as to each item from the date of payment by Landlord until paid in full (the "Lease Interest Rate"). All such sums shall be deemed to be Additional Rent and due contemporaneously with the payment of the next succeeding installment of Annual Rent. At the request of Landlord from time to time, Tenant shall deliver to Landlord written waivers of lien by the architect, contractor, materialman, laborer and any other person supplying materials or labor in connection with the improvement, addition or alteration whereby such person waives any lien upon or against the Project, and the interest of the Landlord therein.

(E) Notwithstanding the provisions hereof, in the event that during the course of and due to any alterations or improvements by Tenant approved by Landlord repairs to the Building become immediately necessary to avoid possible injury or damage to persons or property, Landlord may, but shall not be obligated to, make such repairs at Tenant's expense. Within ten (10) days after Landlord renders a bill for the cost of said repairs, Tenant shall reimburse Landlord. If the Tenant shall fail to so reimburse Landlord, interest on the amount so billed shall accrue from the date of the billing until payment in full, at the Lease Interest Rate. All amounts payable under this subsection (E) shall be deemed Additional Rent.

Section 13.03. **Tenant's Owned Property.** All of Tenant's leasehold improvements, inventory, furniture, chattels, signs, contents, fixtures (including trade fixtures), or personal property of Tenant located on, in, under, above or which serve the Leased Premises installed by Tenant after the Term Commencement Date ("Tenant's Personal Property") and all non-structural alterations, improvements, replacements and changes made prior to or during the term, paid in full by Tenant, shall be owned by and remain the property of Tenant notwithstanding Landlord's obligations to insure any part of the same under Section 10.02(A). Tenant's Personal Property and all such non structural alterations, improvements, replacements and changes, collectively constitute "Tenant's Owned Property".

Section 13.04. **Removal of Tenant's Owned Property.** Tenant may at their option remove all or any of Tenant's Owned Property at any time during the Term. At the expiration or termination of this Lease, the Tenant shall, at their option, remove all of the Tenant's Owned Property, but in all events shall be required to remove the hydrogen network and equipment but may leave hydrogen piping/tubing in or on the Building provided such piping/tubing has been purged of hydrogen., and shall restore the Leased Premises to Landlord's reasonable satisfaction, ordinary wear and tear excepted. If after default in payment of rent or violation of any other provision of this Lease, or upon the expiration of this Lease, the Tenant moves out or is dispossessed and fails to remove any of Tenant's Owned Property prior to such expiration of this Lease, termination, move out or dispossession, then and in that event, Landlord shall have the option to either (a) deem such Tenant's Owned Property abandoned by the said Tenant and shall become the property of the Landlord, or (b) Landlord may remove and either store or dispose of said property at the expense of Tenant and hold Tenant responsible for all expenses incurred thereby. Tenant's obligations as set forth in this paragraph shall survive the end of this Lease.

ARTICLE 14

LANDLORD'S ACCESS

Section 14.01. **Landlord's Access.** (A) Landlord shall, upon at least 24 hours advance oral notice and with an executed Non-Disclosure/Confidentiality Agreement, circumstances permitting, to Tenant's designated agent with Tenant's designated agent being present (Tenant hereby agrees to have a designated agent "on-call" at all times for the purposes of providing Landlord with prompt access to the Leased Premises), have the right (i) at all reasonable times on days Tenant is open for business, to inspect the Leased Premises and to show the same to prospective mortgagees and purchasers; (ii) during the last year of the term on days Tenant is open for business, to show the same to prospective tenants and; and (iii) at all times to make repairs or replacements as required by this Lease or as may be necessary; provided, however, that Landlord shall use all reasonable efforts to minimize interference with Tenant's use and occupancy of the Leased Premises.

(B) Notwithstanding the foregoing, Landlord shall have the right to enter the Leased Premises at any time by master key or by the use of force without rendering Landlord liable therefore (except to repair damage to the entry caused by forcible entry) in the event of an emergency, provided that Landlord shall have made a good faith and diligent effort to contact a representative of Tenant prior to making such entry.

ARTICLE 15 COMPLIANCE WITH LAWS

Section 15.01. **Tenant's Compliance with Laws.** Tenant shall comply with all present and future Laws which are applicable to the Leased Premises and the cleanliness, safety, use and occupation thereof, including without limitation the Americans with Disabilities Action of 1990, as the same may be amended from time to time.

ARTICLE 16 SURRENDER OF POSSESSION

Section 16.01. **Surrender of Possession.** At the expiration or earlier termination of the term, Tenant will peaceably yield up the Leased Premises to Landlord in its original condition, ordinary wear and tear excepted.

ARTICLE 17 SIGNS

Section 17.01. **Tenant's Signs.** With prior consent of Landlord, the Tenant, at its sole cost and expense, may place its signs on the entrance doors to the Leased Premises and elsewhere within the Building. The design and size of any such signs placed by Tenant shall be subject to the prior approval of Landlord, which shall not be unreasonably withheld or delayed. All other signage shall require Landlord's prior written consent which shall not be unreasonably withheld or delayed. Tenant shall not be permitted to install or permit installation of any signs, sculptures and/or graphics which adversely reflect on the dignity or character of the Building as a first-class Building. All signs installed by Tenant shall comply with applicable laws and shall be installed in a good workmanlike manner. Landlord shall have the right to remove any signs installed by Tenant

in violation of this paragraph and to charge Tenant the cost of such removal without liability to Landlord for such removal. Tenant shall obtain all municipal permits and approvals as may be required for Tenant's signage. Landlord has no objection to Tenant seeking signage on Route 85 outside of Vista Technology Park. Landlord agrees to assist Tenant with its seeking signage on Route 85, on the pylon located at 5 Vista Boulevard and potential new signage on 5 Vista Boulevard.

**ARTICLE 18
SUBORDINATION AND NON-DISTURBANCE**

Section 18.01. ***Subordination and Non-Disturbance.*** Upon receipt by the Tenant of a subordination non disturbance agreement by Landlord's mortgage lender, this Lease shall be subordinate and subject to all mortgages covering the Leased Premises, and to all renewals, consolidations, amendments, modifications or replacements thereof. Tenant agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this Lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle Landlord, or Landlord's assigns and legal representatives to the option of canceling this Lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly. The form subordination, non-disturbance agreement set forth on Exhibit E attached to this Lease is acceptable to Tenant. Tenant will attorn to and recognize such successor-landlord as Tenant's landlord and the successor-landlord will accept such attornment and recognize Tenant's rights of possession and use of the Leased Premises in accordance with the provisions of this Lease.

**ARTICLE 19
COVENANTS**

Section 19.01. ***Environmental Representations, Covenants and Indemnities.***

(A) Tenant covenants and agrees that:

(i) Tenant shall not bring, keep, discharge or release or permit to be brought, kept, discharged or released, in or from the Leased Premises any Hazardous Materials except in the ordinary course of Tenant's business and in compliance with all applicable federal, state and local laws, regulations or ordinances. As used in this Lease, "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any other contaminant or pollutant which is or becomes regulated by any federal, state or local law, ordinance, rule or regulation and shall include asbestos and petroleum products and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. '9601 et. seq. and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. '6901 et. seq. Any Hazardous Materials shall be used, kept, stored and disposed of in accordance with all applicable federal, state and local laws. Tenant shall comply with all federal, state and local reporting and disclosure requirements with respect to Hazardous Materials applicable in its business operations on the Leased Premises. Upon the written request of Landlord, Tenant shall provide periodic written reports of the type and quantities

of any and all Hazardous Materials, waste and contaminants (whether or not believed by Tenant to be Hazardous Materials) used, stored or being disposed of by Tenant in or from the Leased Premises or the Project.

(ii) Should any governmental authority or any third party demand that a cleanup plan be prepared or that a clean-up or other remediation action be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Leased Premises and to the extent the same arises from Tenant's use or occupancy of the Leased Premises, then Tenant shall, at Tenant's own expense, prepare and submit any required bonds and other financial assurances; and Tenant shall carry out all such required cleanup plans or other remediation action to Landlord's reasonable satisfaction.

(iii) Tenant shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Materials that is requested by Landlord. If Tenant fails to comply with any of its obligations under this Article 19 within a reasonable time, Landlord may do so; and in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to comply with such obligations. No such action by Landlord and no attempt made by Landlord to mitigate damages under any applicable law shall constitute a waiver of any of Tenant's obligations under this Article 19.

(B) Anything in this Lease to the contrary notwithstanding, Tenant will indemnify, defend and hold Landlord, Landlord's lender, the manager of the Leased Premises and their respective constituent members, employees and agents harmless from and against any and all liabilities, claims, damages, penalties, expenditures, loss, demands, defenses, judgements, suits, actions, proceedings, or charges, including but not limited to, all reasonable costs of legal and expert fees and disbursements and of investigations, monitoring, legal representations, remedial response, removal, restoration or permit acquisitions, which may be required, undertaken, offered, paid, awarded or otherwise incurred as a result of any Hazardous Materials existing on, in or under the Leased Premises to the extent arising from the acts or omissions of the Tenant or any of its employees, agents, licensees, invitees or contractors activities on or about the Leased Premises during the Term.

(D) The obligations and liabilities under this Article 19 shall survive the expiration or termination of this Lease.

Section 19.02. **Negative Covenants.** (A) If the Tenant brings into the facility materials or a process that increases the insurance costs, Tenant agrees to pay any increase in the insurance premiums.

(B) Tenant will not use or permit the Leased Premises or any part thereof to be used for any disorderly, disreputable, unlawful or extra hazardous purposes and will not manufacture any such commodity therein, under penalty of damages and forfeiture, and in the event of a breach hereof, the Term herein shall immediately cease and terminate at the option of the Landlord as if it were the expiration date of the Term. Tenant will not use or permit the Leased Premises to be used for any purposes that, in Landlord's opinion, impair the reputation or character of the

Building. Tenant shall refrain from and discontinue such use immediately upon receipt of written notice from Landlord.

(C) Tenant will not suffer, permit, or commit any waste or nuisance within the Leased Premises or any part thereof.

Section 19.03. **Landlord Covenants.** (A) Landlord will complete Landlord's Work in accordance with the Plans and Specifications and at completion, the Project will comply with all applicable federal, state and local statutes, regulations and ordinances. Tenant shall not be responsible for payment of the cost of Landlord's Work.

ARTICLE 20 DEFAULT

Section 20.01. **Default.** (A) If Tenant shall default in the payment of Annual Rent or Additional Rent when due, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this Lease, or if default be made in the performance of any of the other covenants and agreements in this Lease contained on the part of the Tenant to be kept and performed for thirty (30) days after notice, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Local Governments or of any and all of their Departments and Bureaus, applicable to said Leased Premises, or if the Tenant shall file a petition in bankruptcy or arrangement, or Tenant be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act or if there shall be filed against Tenant a petition in bankruptcy and such proceeding is not stayed or dismissed within sixty (60) days thereafter. If Tenant's abandonment or vacation of the Leased Premises shall result in a termination of the Payment in Lieu of Tax Agreement with the County of Albany Industrial Development Agency ("Agency"), Tenant shall pay full real estate taxes with respect to the Leased Premises and any other cost or expense or penalty charged by the Agency as a result of the abandonment.

The Landlord may (a) cure such default, and any costs and expenses incurred by Landlord therefor, together with interest thereon from date expended until payment in full at the Lease Interest Rate shall be deemed Additional Rent, or (b) if the Landlord so elects, at any time thereafter terminate this Lease and the Term hereof, on giving to the Tenant thirty (30) days notice in writing of the Landlord's intention so to do, and this Lease and the Term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this Lease for the expiration hereof or (c) by summary proceedings or otherwise enter the Leased Premises and repossess the same as the former estate of Landlord and expel Tenant and those claiming under Tenant without prejudice to any other remedies which Landlord may have under this Lease including, without limitation claims for arrears of Annual Rent or Additional Rent then due and owing.

(B) In the event of (i) the re-entry of the Landlord under Section 20.01 of this Lease or (ii) the ejectment of the Tenant by summary proceedings or otherwise under Section 20.01 of this Lease or as otherwise provided by Law, it is hereby agreed that the Tenant shall remain liable and shall pay in monthly payments the Rent which accrues subsequent to the re-entry by the Landlord or the ejectment of Tenant, as the case may be. In the event of termination of this Lease by

Landlord pursuant to Section 21.01 hereof, the Tenant expressly agrees to pay as damages the difference between the Rent that would have been payable under this Lease and the rent collected and received, if any, by the Landlord during the remainder of the Initial Term or the Extension Term, as the case may be, had this Lease not been terminated, such difference or deficiency between the Rent that would have been payable under this Lease and the rent collected if any, shall become due and payable in monthly payments during the remainder of the Initial Term or the Extension Term, as the case may be, had this Lease not been terminated, as the amounts of such difference or deficiency shall from time to time be ascertained. The Landlord may seek monetary damages in any reenter action or summary proceeding or commence a separate action or special proceeding against Tenant and any other responsible party, to recover monetary damages accruing by reason of any such default, together with interest, plus all reasonable attorneys' fees, disbursements, court costs and other reasonable expenses incurred in connection therewith. Monetary damages shall include, without limitation, Annual Rent and all Additional Rent due at the time proceedings are commenced, rent shortages accruing after such default in connection with any re-letting attempts by Landlord, plus all costs associated with any reletting of the Leased Premises.

(C) If either party incurs any expense, including reasonable attorneys' fees, in instituting, prosecuting and/or defending any action or proceeding under this Lease, then the non prevailing party shall promptly reimburse the prevailing party in any such action or proceeding for such expenses incurred, together with interest accrued thereon the Lease Interest Rate from the date of the final judgment or final determination of such action or proceeding until payment in full.

(D) Tenant hereby waives any rights of redemption to which Tenant or any person under Tenant might be entitled by any law now or hereafter in force.

ARTICLE 21 HOLDOVER

Section 21.01. **Holdover.** The parties recognize that the damage to Landlord resulting from any failure by Tenant to surrender possession of the Leased Premises upon the expiration or earlier termination of this Lease will be substantial, will exceed the amount of the monthly installments of the Annual Rent payable hereunder, and will be impossible to measure accurately. Tenant therefore agrees that if possession of the Premises is not surrendered to Landlord upon the expiration or earlier termination of the Lease, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall pay to Landlord, as liquidated damages, for each month and for each portion of any month during which Tenant holds over in the Leased Premises for up to three (3) months after the expiration or earlier termination of this Lease, a sum equal to one hundred and twenty five percent (125%) of the aggregate of that portion of the Annual Rent and Additional Rent that was payable under this Lease during the last month of the Term. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Leased Premises after the expiration or earlier termination of the Lease. The provisions of this Article 21 shall survive the expiration or earlier termination of this Lease. Tenant's occupancy subsequent to the expiration or earlier termination of this Lease, whether or not with the consent or acquiescence of Landlord, shall be deemed to be that of a tenancy-at-will and in no event from month-to-month or year-to-year and it shall be subject to all terms, covenants and conditions of this Lease applicable thereto, including, without limitation, those set forth in this Article 21. In the event the Tenant defaults or remains in

possession of the Leased Premises or any part thereof after the expiration of the tenancy-at-will created hereby then the Tenant's occupancy shall be deemed a tenancy-at-sufferance and not a tenancy-at-will.

ARTICLE 22
NOTICES

Section 22.01. **Notices.** Any notice, request or demand under this Lease shall be in writing and shall be considered properly given when addressed as hereinafter provided, and (a) when served personally, (b) three (3) days after the date sent by registered or certified mail (return receipt requested) and deposited in a United States general or branch post office, or (c) one (1) day after the date sent by a recognized private express mail carrier. Any notice, request or demand by Tenant to Landlord shall be addressed to Landlord at:

302 Washington Avenue Extension
Albany, New York 12203
Attn: Mr. Joseph R. Nicolola

With copies to:

302 Washington Avenue Extension
Albany, New York 12203
Attn: Property Management

until otherwise directed in writing by Landlord and, if requested in writing by Landlord, simultaneously given to Landlord's first mortgagee at the address specified in such request. Any notice, request or demand by Landlord to Tenant shall be addressed to Tenant at:

Plug Power, Inc.
968 Albany Shaker Road Latham, New York 12110
Attn: Matthew Savoie, Director of Facilities

With a copy to:

Plug Power, Inc.
968 Albany Shaker Road Latham, New York 12110
Attn: Office of the General Counsel

ARTICLE 23
ASSIGNMENT AND SUBLETTING

Section 23.01. **Assignment or Sublease.** (A) Except as otherwise provided in this Article 23 to the contrary, Tenant, its successors and assigns shall not assign this Lease, or transfer possession or occupancy thereof (by operation of law or in any other manner) to any person, firm or corporation, without the written consent of Landlord, which consent shall not be unreasonably

withheld. It shall be deemed reasonable for the Landlord to withhold its consent to such assignment if the Tenant has not demonstrated to reasonable satisfaction of the Landlord that (1) the financial strength of the proposed assignee or subtenant and any guarantor of the Lease is at least equal to that of the Tenant; and (2) the business reputation of the proposed assignee or subtenant is in accordance with generally acceptable commercial standards and otherwise reasonably satisfactory to Landlord. Landlord may also withhold consent to any request for assignment if Tenant shall be in default of its obligations under this Lease or if Landlord's lender does not consent to the proposed assignment. Tenant may, without consent of the Landlord, but upon written notice to Landlord assign or sublease this Lease to any entity that comprises substantially all of the same personnel, has the same business purpose and has the same business reputation and financial strength as Tenant, or permit any such entity to occupy all or any part of the Premises provided that Tenant is not in default and Landlord is given not less than fifteen (15) days prior notice of the assignment, sublet or occupancy. Tenant's option to assign its rights under the Lease to such related successor entity shall not be deemed an offer from Tenant to Landlord subject to Right of Recapture as set forth in Section 23.03. Provided Tenant is not in default it shall have the right to sublet the Premises.

(B) Tenant further agrees that any permitted assignment or subletting of the Leased Premises shall be subject to the provisions of this Section 23.01(B). Any subletting or assignment consented to by Landlord shall be evidenced in writing in a form reasonably acceptable to Landlord. Consent by Landlord to any assignment or subletting by Tenant shall not operate as a waiver of the necessity for obtaining Landlord's consent in writing to any subsequent assignment or subletting; nor shall the collection or acceptance of rent from any such assignee, subtenant or occupant constitute a waiver or release of Tenant of any covenant or obligation contained in this Lease for which Tenant and any guarantor of this Lease shall remain liable and Tenant and guarantor, if any, (the "Guarantor") agree that Landlord may enforce its rights directly against Tenant and Guarantor in any proceeding commenced by Landlord against assignee. In the event that Tenant defaults under this Lease in the payment of Annual Rent or Additional Rent or in the performance of any of Tenant's other covenants or obligations under this Lease, Tenant hereby assigns to Landlord the rent due from any subtenant of Tenant and hereby authorizes and directs each such subtenant to pay said rent directly to Landlord.

Section 23.02. **Liability of Tenant.** If Tenant assigns or sublets hereunder, Tenant shall notify Landlord thereof and Tenant shall remain responsible for the faithful performance and observance of all of the covenants and obligations on Tenant's part to be performed in this Lease. In the event of any subletting of the Leased Premises or assignment of this Lease by Tenant, with or without Landlord's consent, Tenant shall remain liable to Landlord for payment of the Rent stipulated herein and all other covenants and conditions contained herein.

Section 23.03. **Right of Recapture.** Notwithstanding anything to the contrary contained in this Article 23, upon receipt of a request by Tenant to either assign this Lease or sublet any portion of the Leased Premises, Landlord shall have the option, to be exercised within thirty (30) days thereafter by written notice to Tenant, to terminate this Lease effective as of the requested date of assignment or with respect to the portion of the Leased Premises requested to be assigned or sublet, effective as of the date of the proposed assignment or sublease and to recapture this space. If Landlord chooses to terminate the Lease, Tenant may withdraw Tenant's office notice to assign or sublet within fifteen (15) days of receiving Landlord's written notice. Withdrawal of Tenant's

offer notice to assign or sublet will result in a return to the original status of the Lease whereby Tenant will be entitled to remain in the Leased Premises for the remainder of the term. In the event the Landlord shall exercise the right of recapture option, this Lease, in the case of an assignment, shall terminate on or as of the date specified above as if that date had been fixed as the expiration date of the Term of this Lease, and the Tenant shall surrender possession of the entire Leased Premises on such termination date, in accordance with the provisions of this Lease. In the event of subletting, Landlord and Tenant shall enter into a modification to this Lease, removing the portion of the Leased Premises requested to be sublet from the definition of the Leased Premises, and otherwise making required changes to Tenant's obligations hereunder to reflect the reduction in the size of the Leased Premises.

Section 23.04. **Waiver of Claim.** Any permitted sublease of all or any part of the Leased Premises must contain a waiver of claims against Landlord by the subtenant and require the subtenant's insurer to issue waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Leased Premises or the contents thereof. All waivers shall be in form and substance acceptable to Landlord.

ARTICLE 24 LIMITATION OF PARTIES' LIABILITY

Section 24.01. **Limitation of Landlord's Liability.** Notwithstanding anything to the contrary provided in this Lease, Tenant agrees that it shall look solely to the estate and property of the Landlord in the Leased Premises, and subject to the prior rights of any mortgagee and underlying landlord in the Leased Premises (and not to the members of the Landlord) for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord and no other assets of Landlord or its members shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies.

ARTICLE 25 LANDLORD ASSIGNMENT

Section 25.01. **Landlord Assignment.** Subject to Tenant's right of first offer and purchase option set forth in Article 7, Landlord shall have the right to assign its interest in this Lease without recourse upon written notice to Tenant. The word "Landlord" as used herein, means only the owner for the time being of Landlord's interest in this Lease, and, in the event of any transfer of Landlord's interest in this Lease the transferor shall cease to be liable, and shall be released from all liability for the performance or observance of any agreements or conditions on the part of Landlord to be performed or observed provided that from and after said transfer, the transferee shall assume and be liable for the performance and observance of said agreements and conditions. In addition, the words "Landlord" and "Tenant" as used in this Lease shall mean every person or party named as Landlord and/or Tenant in this Lease. Any notice given as provided in the Lease shall bind all such parties and it shall have the same force as if given to all of them. The parties recognize and agree that Landlord shall assign the lease to its lender without being subject to Article 7 of this Lease and agree that Lender shall not be bound to Article 7 of this Lease in the event of a foreclosure or transfer by deed in foreclosure to a subsequent purchaser.

ARTICLE 26
QUIET ENJOYMENT

Section 26.01. *Quiet Enjoyment.* Provided Tenant performs the covenants and obligations in this Lease on Tenant's part to be performed in accordance with the terms of this Lease, subject to Article 18 hereof Landlord covenants and agrees to take all necessary steps to secure and to maintain for the benefit of Tenant the quiet and peaceful possession of the Leased Premises and parking area for the Term of this Lease, without hindrance, claim or molestation by Landlord or any other person.

ARTICLE 27
WAIVER

Section 27.01. *Waiver.* The failure of the either party to insist upon a strict performance of any of the terms, conditions and covenants to be performed or observed by the other party herein shall not be deemed a waiver of any rights or remedies that either party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants to be performed or observed by either party herein. The receipt by Landlord of Annual Rent, Additional Rent or other sums due hereunder with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No acceptance by Landlord of a lesser amount than the amount then due hereunder, nor any endorsement or statement on any check or any letter accompanying any check or payment as Annual Rent or Additional Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such sums due hereunder or pursue any other remedy provided in this Lease.

ARTICLE 28
RESERVED

ARTICLE 29
ESTOPPEL CERTIFICATE

Tenant agrees, at any time and from time to time, upon not less than ten (10) days' prior notice from Landlord, to execute, acknowledge and deliver to Landlord or a Person designated by Landlord, a statement in writing in the form attached and marked **Exhibit E**: (a) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications); (b) whether or not the Term has commenced and if it has commenced, stating the dates to which the Annual Rent and Additional Rent have been paid by Tenant; and (c) stating, to the best of Tenant's knowledge, whether or not Landlord or Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease, and if Tenant has knowledge of such a default, specifying each such default and such other information as may be reasonably requested.

**ARTICLE 30
BROKER**

The parties mutually represent and warrant to each other that neither party has dealt with any broker in connection with this transaction except Daniel O'Brien, NAI Platform ("Broker") and that neither party knows of any other broker who has claimed or may have a right to claim a commission in connection with this transaction. The parties agree Broker shall be due a commission with respect to this Lease but not with respect to the exercise by Tenant to purchase the Option Property or to exercise any option to purchase the Leased Premises. Landlord shall pay Broker pursuant to the terms of a separate agreement. Tenant shall defend, indemnify and save harmless Landlord from and against any claim which may be asserted against Landlord by any broker if the claim (a) is made in connection with this transaction and (b) Tenant employed or made use of or was responsible for the claiming broker. Tenant shall reimburse Landlord for reasonable expenses, losses, costs and damages (including reasonable attorneys' fees and court costs if Tenant fails or refuses to defend as herein required) incurred by Landlord in connection with such claims. Landlord shall defend, indemnify and save harmless Tenant from and against any claim which may be asserted against Tenant by any broker if the claim (a) is made in connection with this transaction, and (b) arises out of conversations or dealings between Landlord and any claiming broker or (c) results from a fraud committed or misrepresentation made by Landlord or any broker employed by Landlord. Landlord shall reimburse Tenant for reasonable expenses, losses, costs and damages (including reasonable attorney's fees and court costs if Landlord fail or refused to defend as herein required) incurred by Tenant in connection with such claims. This Article shall survive the expiration or earlier termination of this Lease.

**ARTICLE 31
EXCUSABLE DELAY**

Whenever a party hereto is required by the provisions of this Lease to perform an obligation, except for the payment of Annual Rent or Additional Rent and the provision of insurance, and such party is prevented beyond its reasonable control from doing so by reason of an Excusable Delay, as defined in this Article 31, such party shall be temporarily relieved of its obligation to perform, provided it promptly notifies the other party of the specific delay and exercises due diligence to remove or overcome it. The words "Excusable Delay" shall mean any delay due to strikes, lockouts or other labor or industrial disturbance; civil disturbance; future order of any government, court or regulatory body claiming jurisdiction; act of the public enemy; war, riot, sabotage, blockage or embargo; or order of any government or regulatory body; lightning, earthquake, fire, storm, hurricane, tornado, flood, washout or explosion, or act or omission of one party hereto which prevents the party claiming delay from complying, or which materially and adversely interferes with the claiming party's ability to comply with an obligation under this Lease on its part to be performed. Any time limits required to be met by either party hereunder, whether specifically made subject to Excusable Delay or not, except those related to the payment of Annual Rent or Additional Rent and the provision of insurance, shall, unless specifically stated to the contrary elsewhere in this Lease, be automatically extended by the number of days by which any performance called for is delayed due to Excusable Delay.

**ARTICLE 32
MEMORANDUM OF LEASE**

This Lease shall not be recorded by either Landlord or Tenant. However, either party may request that a memorandum of this Lease be recorded in a form reasonably acceptable to both parties. The requesting party shall pay all costs of preparing and recording such memorandum of this Lease. If a memorandum of this Lease is to be recorded, before Landlord will execute same, Tenant must first place in escrow with an attorney designated by Landlord a document in a form reasonably acceptable to both parties terminating of record the memorandum to be recorded, which termination may be released from escrow on the expiration or earlier termination of this Lease.

**ARTICLE 33
BINDING AGREEMENT**

This Lease shall bind and inure to the benefit of Landlord and Tenant and their respective successors and, subject to the provisions hereof, permitted assigns.

**ARTICLE 34
ENTIRE AGREEMENT**

This Lease, including all Exhibits and other attachments referred to herein, contains the entire agreement of Landlord and Tenant with respect to the matters stated herein, and may not be modified except by an instrument in writing which is signed by both parties and delivered by each to the other. Exhibits and such other attachments are incorporated herein as fully as if their contents were set out in full at each point of reference to them.

**ARTICLE 35
MISCELLANEOUS**

Section 35.01. ***Partial Invalidity.*** If any covenant, condition or provision of this Lease, or the application thereof to any person or entity or circumstance, shall be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such covenant condition or provision to any other person or entity or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by applicable Laws.

Section 35.02. ***Governing Law.*** This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (excluding conflict of laws provisions).

Section 35.03. ***Grammatical Usage.*** In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form, and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

Section 35.04. **Terms Inclusive.** Subject to the provisions of Article 25 hereof the term “Landlord” and “Tenant” shall include the parties named in this Lease, their legal successors in interest, and all permitted subtenants or assigns.

Section 35.05. **Captions.** Captions are inserted in the Lease only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this Lease or in any way affect this Lease.

Section 35.06. **Further Action.** The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of this Lease.

Section 35.07. **Acceptance of Sums due hereunder.** Landlord is entitled to accept, receive and cash or deposit any payment made by Tenant on account of this Lease in any amount whatsoever and apply the same at Landlord’s option to any obligation of Tenant under this Lease and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same.

Section 35.08. **Trial by Jury. IT IS MUTUALLY AGREED BETWEEN THE LANDLORD AND TENANT THAT EACH OF THEM AND HEREBY DOES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE, THE TENANT’S USE OR OCCUPANCY OF THE LEASED PREMISES, AND ANY CLAIM OF INJURY OR DAMAGE RELATED TO ANY OF THE SAME.**

Section 35.09. **Amendment or Termination.** Except as otherwise provided herein, this Lease may be modified or amended only with the prior written approval of both parties, and it may not be discharged or terminated except in writing.

Section 35.10. **Authorizations and Representations.** Each party hereby severally represents that it has been duly authorized to execute, deliver and perform this Lease through its members, officers or agents signing on its behalf.

Section 35.11. **Rules of Interpretation.** This Lease shall be construed neither against Landlord nor Tenant; each provision hereof shall be deemed both a covenant and a condition running with the Land; except as otherwise expressly provided in this Lease and its Exhibits and other attachments, the singular includes the plural and the plural includes the singular; “or” is not exclusive; a reference to an agreement or other contract includes supplements and amendments thereto to the extent permitted by this Lease; a reference to laws includes any amendment or supplement to such laws; a reference to a person or entity includes its permitted successors and assigns; accounting provisions have the meanings assigned to them by generally accepted accounting principles applied on a consistent basis; the words “such as,” “include,” “includes” and “including” are not limiting; except as specifically agreed upon in this Lease, any right may be exercised at any time and from time to time and all obligations are continuing obligations throughout the Term of this Lease and in calculating any time period, the first day shall be excluded and the last day shall be included and all days are calendar days unless otherwise specified. If any

deadline shall fall on a Saturday, Sunday or legal holiday, the deadline shall be extended to the next business day.

Section 35.12. **No Exclusive Remedies.** No remedy or election given by any provision in this Lease shall be deemed exclusive unless so indicated, but each shall, wherever possible, be cumulative in addition to all other remedies at law or in equity which either party may have arising out of a default of the other party in the observance or performance of its covenants or obligations under this Lease.

Section 35.13. **Exclusive Agreement.** This Lease Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining hereto. No covenant, representation or condition not expressed in this Lease shall affect, or be deemed to interpret, change or restrict the express provisions hereof.

Section 35.14. **Counterparts.** When several counterparts of this Lease have been executed, all counterparts shall constitute one and the same instrument.

Section 35.15. **Survival of Obligations.** The obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term.

**ARTICLE 36
EXAMINATION OF LEASE**

The submission of this Lease for examination, negotiation and signature does not constitute an offer to lease, or a reservation of, or an option for the Leased Premises. This Lease shall not be binding and in effect until at least one counterpart, duly executed by both parties, has been delivered to both Landlord and Tenant.

**ARTICLE 37
ADDITIONAL TERMS
TENANT AND LANDLORD OBLIGATIONS**

1. Provided the Tenant signs the lease there will be no obligations financial or otherwise from the pre-construction development agreement except with respect to the payment for the loading dock equipment in the amount of \$450,000 which Tenant is required to pay under the terms of that agreement;
 2. Landlord agrees to provide a detailed construction schedule for the entire facility that shall be agreed upon by both parties;
-

IN WITNESS WHEREOF, this Lease has been duly executed by the duly authorized representatives of Landlord and Tenant as of the date first above written.

LANDLORD

VISTA REAL ESTATE DEVELOPMENT LLC

By: _____

Name: _____

Title: _____

TENANT

PLUG POWER, INC.

By: _____

Name: _____

Title: _____

EXHIBIT A

SITE PLAN

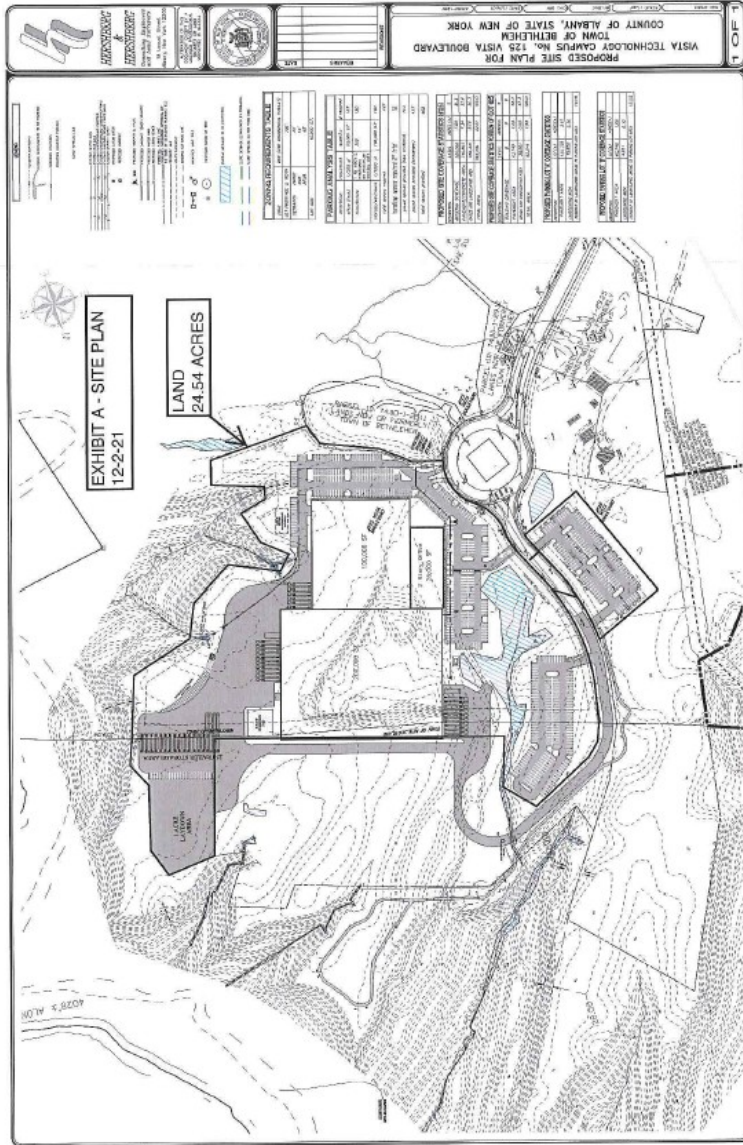


EXHIBIT B
FEE OWNER RECOGNITION AGREEMENT

FEE OWNER RECOGNITION AGREEMENT

FEE OWNER RECOGNITION AGREEMENT (the "**Agreement**") made and entered into this 15th day of December, 2021, by and among **Campus Associates XI LLC**, a New York limited liability company with an address at 302 Washington Avenue Extension, Albany, New York 12203 (the "**Owner**"); **Vista Real Estate Development LLC**, a New York limited liability company with an address at 302 Washington Avenue Extension, Albany, New York 12203 (the "**Ground Tenant**"); and **Plug Power, Inc.** a New York corporation with an address at _____ (the "**Tenant**").

WITNESSETH:

WHEREAS:

A. By lease dated December 13, 2021 (the "**Ground Lease**"), Owner leased to Ground Tenant a tract of land (the "**Ground Lease Tract**") consisting of approximately 24.54 acres located at Vista Boulevard, Town of Bethlehem and Town of New Scotland, Albany County, New York.

B. Ground Tenant has sublet the Ground Lease Tract and an approximate 350,000 +/- sq ft facility to be constructed therein to Tenant (the "**Premises**") for an initial term of fifteen (15) years, with six extension terms of five (5) years each, under a Lease Agreement (the "**Lease**") dated December 15, 2021. Owner acknowledges receipt of a copy of the Lease. The Premises are more particularly described in the Lease.

C. The parties wish to provide for the continuation of the Lease for its full term notwithstanding any termination of the Ground Lease, upon and subject to the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of one dollar and other good and valuable considerations by each party in hand paid to the others, the receipt and sufficiency of which are acknowledged, and in consideration of their mutual promises, Owner, Ground Tenant and Tenant agree as follows:

1. Condition Precedent. The rights and obligations of the parties under this Agreement are expressly conditioned upon Ground Tenant having substantially completed construction and having delivered possession of the Premises to Tenant, and Tenant having accepted possession of the Premises, all as provided in the Lease.

2. Attornment. Tenant agrees, from and after an Attornment Event, as defined in subparagraph (a) below, to attorn to the Owner, and Owner agrees to accept such attornment, under all of the terms, conditions, and covenants of the Lease, but subject to the limitations and

provisions stated in the following subparagraphs:

(a) The term, "Attornment Event", as used in this Agreement, is defined as the first to occur, during the term of the Lease (including any extension or renewal), of any of the following events:

(i) the Ground Lease is terminated for any reason (including without limitation a termination due to the default of Ground Tenant), unless the Lease, by its express terms, terminates at the same time due to the occurrence of a condemnation or casualty loss;

(ii) the Owner, pursuant to the provisions of the Ground Lease, terminates the right of Ground Tenant to possession under the Ground Lease due to a default of Ground Tenant under the Ground Lease; or

(iii) the term of the Ground Lease expires prior to the expiration of the term of the Lease (including any extension of the Lease pursuant to its terms).

(b) From and after the occurrence of an Attornment Event, the respective rights and obligations of the Tenant and the Owner will be as provided in the Lease, which is incorporated in this Agreement by reference, and the Lease shall continue in full force and effect as a direct lease between the Owner and the Tenant, with the same force and effect as if the Owner, as landlord, and the Tenant, as tenant, had entered into a lease at the time of occurrence of the Attornment Event, upon the identical terms and conditions as contained in the Lease, for a term equal to the then unexpired term of the Lease, and including all rights to extend the term of the Lease for any extension periods provided for in the Lease subsequent to the then current term of the Lease, except that:

(i) The Owner will not be liable for nonpayment or nonperformance by the Ground Tenant of Lease obligations arising prior to the Attornment Event, or for damages resulting from Ground Tenant's act or omission which occurred or arose prior to the Attornment Event (whether or not the same shall be continuing defaults after the Attornment Event), except that, as Tenant's sole remedies against Owner for such defaults of Landlord prior to the Attornment Event:

(A) Tenant will be entitled to utilize any rent reduction, offset, credit or holdback rights available to Tenant under the Lease to recover the direct cost of curing any such default of Ground Tenant;

(B) Notwithstanding anything to the contrary in the Lease, Tenant will be entitled to remedy any nonmonetary default or nonperformance by Ground Tenant (such as, for example, a failure to repair) that occurred prior to, and continues unremedied after, the occurrence of the Attornment Event and offset the reasonable direct costs of curing the same against all rent and other amounts coming due under the Lease until Tenant has recovered the full amount of such costs; or

(ii) reserved.

(iii) The Owner will not be liable for any security deposit paid by Tenant to Ground Tenant, except to the extent such security deposit has been actually received by or

credited to the account of the Owner.

(iv) The Tenant will be under no obligation to pay any rent or render any performance to the Owner until it has received notice (in the manner provided in Paragraph 6 of this Agreement) of the occurrence of the Attornment Event from the Owner.

(c) The Owner will be liable for all obligations of the Ground Tenant under the Lease from and after occurrence of the Attornment Event, subject to the exceptions stated in subparagraph (b), above.

3. Recognition and Non-Disturbance. The Owner agrees that so long as the Tenant is not in default under the Lease beyond any applicable cure period:

(a) If an Attornment Event occurs, the Tenant's possession of the Premises and its rights and privileges under the Lease will continue in full force and effect and will not be diminished or interfered with and Tenant's occupancy of the Premises will not be disturbed; and

(b) Tenant will not be named as a party to any eviction proceedings or proceedings to establish Ground Tenant's default under the Ground Lease or recover possession of the Ground Lease Tract, unless Tenant's joinder is required by law.

4. Owner's Right to Cure Landlord Defaults. Tenant will give Owner duplicate notice of any claimed default on the part of Ground Tenant, in the manner provided in Paragraph 6 of this Agreement, at the address set forth in this Agreement, and will permit Owner to cure any default by Landlord under the Lease during any period when the Ground Tenant would be entitled to do so, and for (i) 10 days after such period with respect to any default which can be cured by the payment of money, and (ii) with respect to any other default, for thirty (30) days after such period, and for such reasonable additional time, not to exceed 30 days, as may be required to effect a cure, if Owner, acting diligently, cannot effect the cure within the first 30 day period, but promptly commences to cure the default and notifies Tenant in writing that it has commenced such cure within such period, and proceed diligently to affect such cure.

5. No Modification of Ground Lease. Nothing in this Agreement modifies or alters the respective rights and obligations of Owner and Ground Tenant as between themselves under the Ground Lease, or waives any rights of either of them against the other under the Ground Lease.

6. Notices. All notices required or permitted by the terms of this Agreement shall be deemed given only when deposited in the United States Registered or Certified Mail, Postage Prepaid, or, with verification of delivery, when received by telegram, cable, telex, commercial courier or any other generally accepted means of business communication, to a party at the address set forth below for each party. A party may change the address to which notices must be sent by giving notice to the other parties in accordance with this Paragraph. The initial notice address for each party is as follows:

If to Owner: **Campus Associates XI LLC**
302 Washington Avenue Extension
Albany, New York 12203

If to Ground **Vista Real Estate Development LLC**
Tenant: 302 Washington Avenue Extension
Albany, New York 12203

If to Tenant: **Plug Power, Inc.**
968 Albany Shaker Road
Latham, New York 12110
Attn: Matthew Savoie, Director of Facilities

With a copy to:

Plug Power, Inc.
968 Albany Shaker Road
Latham, New York 12110
Attn: Office of the General Counsel

7. Joinder of Pee Mortgagee. If Owner grants to any mortgagee a lien on the Ground Lease Tract, Owner will secure the joinder of such mortgagee in this Agreement.

8. Interpretation and Effect. This Agreement:

(a) shall remain in effect at all times during the Lease or any extension or renewal of the Lease, notwithstanding any default under or termination of the Ground Lease.

(b) is to be governed, enforced, and construed in accordance with the internal laws of the State of New York applicable to contracts made and to be performed in New York;

(c) binds and inures to the benefit of the parties and their respective successors and assigns, and the covenants contained in this Agreement shall be covenants running with the land and bind the respective successors in title to the Ground Lease Tract, the leasehold estate in the Ground Lease Tract created by the Ground Lease, and the leasehold estate in the Premises created by the Lease; and

(d) may not be modified except by a writing executed by the parties.

[Remainder of page intentionally left blank - Signature Page follows]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as a needed instrument by their duly authorized officers, all as of the date first stated above.

OWNER:

Campus Associates XI LLC

By: _____
Name: _____
Title: _____

GROUND TENANT:

Vista Real Estate Development LLC

By: _____
Name: _____
Title: _____

TENANT:

Plug Power, Inc.

By: _____
Name: _____
Title: _____

EXHIBIT C
AGREEMENT OF LEASE COMMENCEMENT

THIS AGREEMENT, made as of this _____ day of _____, 20____, between _____, a limited liability company, having an office at 302 Washington Avenue Extension, Albany, New York 12203 (hereinafter called "Landlord"), and _____ (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, by a certain lease (hereinafter called the "Lease") dated the __ day of _____, 20____, Landlord leased to Tenant a portion of the real property described in Exhibit "A" annexed hereto and made a part hereof (hereinafter called the "Leased Premises"); and

WHEREAS, Tenant is now in possession of the Leased Premises under the Lease; and WHEREAS, under the terms of the Lease, Landlord and Tenant agreed to execute, acknowledge and deliver to each other an agreement setting forth the Term Commencement Date (as defined in the Lease), the date of expiration of the initial term of the Lease [**and the commencement date of the Extension Term (as defined in the Lease)**].

NOW, THEREFORE, Landlord and Tenant agree as follows:

- I. The Term Commencement Date is _____, 20____.
 2. The date of the expiration of the initial term of the Lease shall be _____, 20____.
 3. **[The commencement date of the Extension Term shall be the first day of _____, 20____.]**
 4. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.
 5. This Agreement and the Lease together contain the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.
-

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

LANDLORD

VISTA REAL ESTATE DEVELOPMENT LLC

By: /s/ Joseph Nicolla
Name: Joseph Nicolla
Title: Member

TENANT

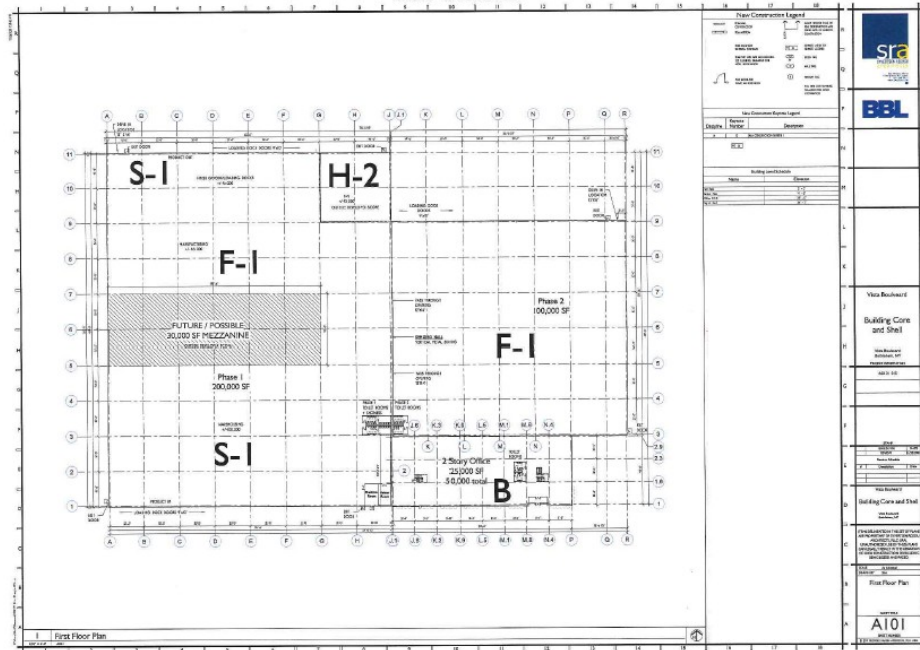
PLUG POWER, INC.

By: /s/ David Mindnich
Name: David Mindnich
Title: EVP Global Manufacturing

EXHIBIT D
PLANS AND SPECIFICATIONS FOR
LANDLORD'S WORK







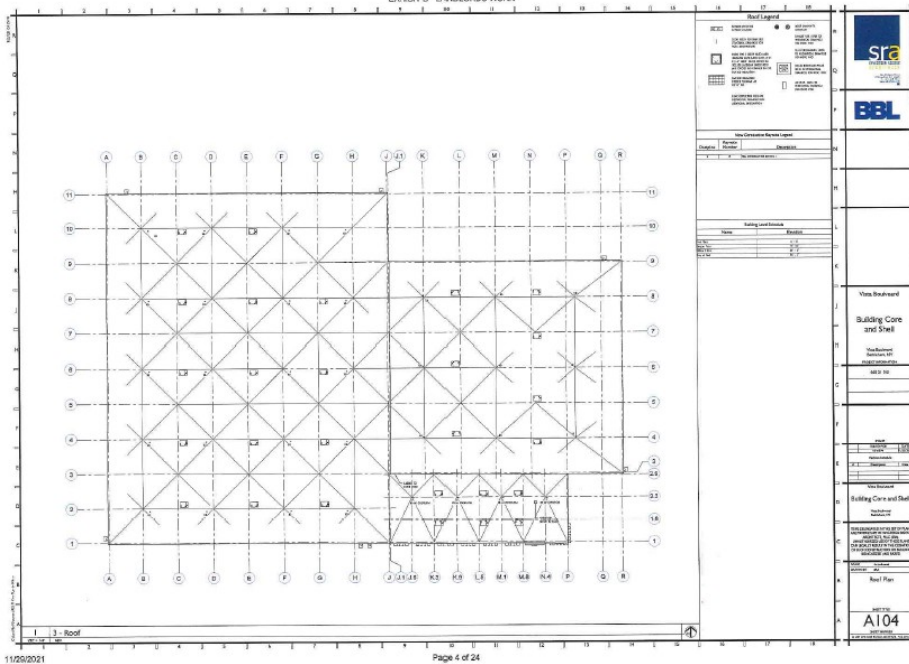
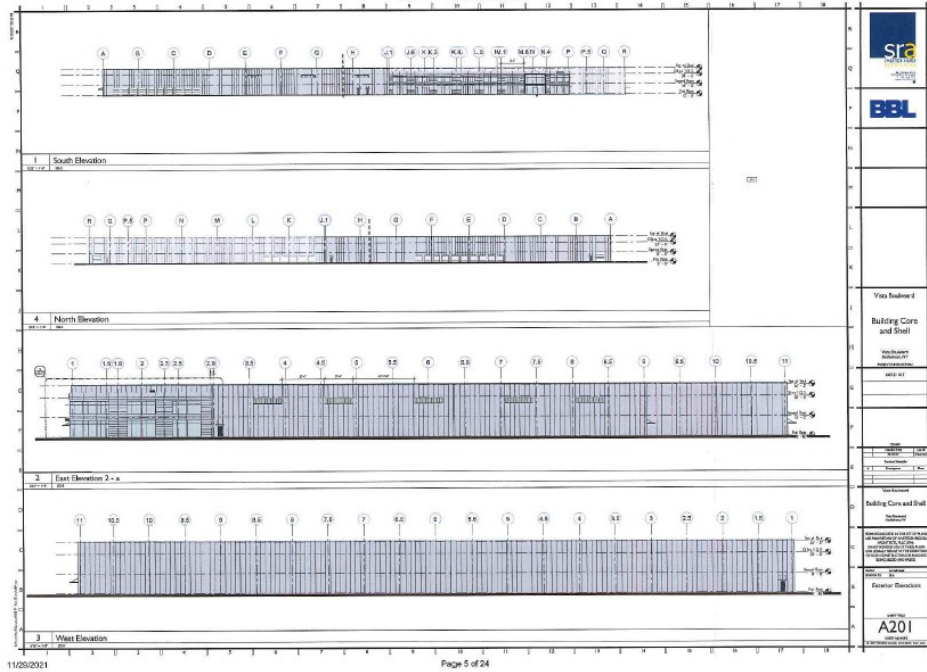


EXHIBIT D - LANDLORDS WORK



1	Via Insieme I
2	Building Core and Shell
3	Building Core and Shell
4	Building Core and Shell
5	Building Core and Shell
6	Building Core and Shell
7	Building Core and Shell
8	Building Core and Shell
9	Building Core and Shell
10	Building Core and Shell
11	Building Core and Shell
12	Building Core and Shell
13	Building Core and Shell
14	Building Core and Shell
15	Building Core and Shell
16	Building Core and Shell
17	Building Core and Shell
18	Building Core and Shell
19	Building Core and Shell
20	Building Core and Shell
21	Building Core and Shell
22	Building Core and Shell
23	Building Core and Shell
24	Building Core and Shell
25	Building Core and Shell
26	Building Core and Shell
27	Building Core and Shell
28	Building Core and Shell
29	Building Core and Shell
30	Building Core and Shell
31	Building Core and Shell
32	Building Core and Shell
33	Building Core and Shell
34	Building Core and Shell
35	Building Core and Shell
36	Building Core and Shell
37	Building Core and Shell
38	Building Core and Shell
39	Building Core and Shell
40	Building Core and Shell
41	Building Core and Shell
42	Building Core and Shell
43	Building Core and Shell
44	Building Core and Shell
45	Building Core and Shell
46	Building Core and Shell
47	Building Core and Shell
48	Building Core and Shell
49	Building Core and Shell
50	Building Core and Shell
51	Building Core and Shell
52	Building Core and Shell
53	Building Core and Shell
54	Building Core and Shell
55	Building Core and Shell
56	Building Core and Shell
57	Building Core and Shell
58	Building Core and Shell
59	Building Core and Shell
60	Building Core and Shell
61	Building Core and Shell
62	Building Core and Shell
63	Building Core and Shell
64	Building Core and Shell
65	Building Core and Shell
66	Building Core and Shell
67	Building Core and Shell
68	Building Core and Shell
69	Building Core and Shell
70	Building Core and Shell
71	Building Core and Shell
72	Building Core and Shell
73	Building Core and Shell
74	Building Core and Shell
75	Building Core and Shell
76	Building Core and Shell
77	Building Core and Shell
78	Building Core and Shell
79	Building Core and Shell
80	Building Core and Shell
81	Building Core and Shell
82	Building Core and Shell
83	Building Core and Shell
84	Building Core and Shell
85	Building Core and Shell
86	Building Core and Shell
87	Building Core and Shell
88	Building Core and Shell
89	Building Core and Shell
90	Building Core and Shell
91	Building Core and Shell
92	Building Core and Shell
93	Building Core and Shell
94	Building Core and Shell
95	Building Core and Shell
96	Building Core and Shell
97	Building Core and Shell
98	Building Core and Shell
99	Building Core and Shell
100	Building Core and Shell



EXHIBIT D - LANDLORDS WORK

Building Standards & Scope of Work

Phase I

The Manufacturing Building

Plug Power

Vista Park

Bethlehem, New York

November 29, 2021

The following represents the anticipated building standards and scope of work to construct a new 200,000 SF, one-story open warehouse/manufacturing facility in the Vista Park located in Bethlehem, New York. All work will be performed in a professional, warrantable and workman like manor and in full compliance with OSHA requirements and NYS labor laws for a private construction project

Division 010000 - General Conditions:

- Architectural & structural design
- Site/civil engineering
- MEP Design
- Wetland delineation
- Geotechnical engineering
- Project management
- Full-time field supervision
- Design development (pre-construction support)
- Safety
- Temporary field office
- Postal & printing costs
- Survey & layout
- Temporary facilities
- Weekly cleaning
- Final cleaning
- Dumpster(s)
- General liability insurance
- Builders risk insurance
- Building permit

Division 030000 - Concrete & Reinforcement:

- Cast-in-place concrete footings, foundations walls, & isolated piers
 - 6" slab on grade with WWF 6 x 6 W2.9 x W2.9, 4,000 psi throughout
 - Concrete steel reinforcing at footings & foundations
 - Rigid foundation insulation per code
 - Concrete pads at building entrances, dumpster, transformer, etc.
 - Concrete walks to building main entrances
-

EXHIBIT D - LANDLORDS WORK

Division 050000 - Structural Steel & Metals:

- Structural steel metal frame, columns, bracing, purlins, girts, bar joists, metal deck & erection
- Column spacing 50'± x 50'
- 30' clear ceiling height
- Exposed structure to be prime painted
- Metal canopy systems at exit doors
- Pipe bollards at grade sectional doors
- Miscellaneous steel framing at sectional dock & sectional grade doors

Division 060000 - Wood & Plastics:

- Miscellaneous wood blocking at mechanical rooms
- Wood blocking at roof

Division 070000- Thermal & Moisture Protection:

- Metal wall panels and wall insulation
- Membrane roofing & R-30 rigid roof insulation over metal deck with associated copings, flashings & accessories for a complete warrantable system, internally drained roof system
- Canopy roofing at exit doors
- Joint sealants & caulking

Division 080000- Doors, Specialty Doors & Windows:

- Exterior hollow metal doors, hollow metal frames & commercial hardware
- Rated interior MEP room hollow metal doors, hollow metal frames & commercial hardware
- Aluminum & glass entry doors & storefront
- Aluminum & glass windows
- Twenty (20) 9' x 10' sectional dock doors, manual operation
- One (1) 12' x 14' sectional grade door, manual operation

Division 090000 - Finishes:

- Painting hollow metal doors & frames
- Paint miscellaneous steel

Division 100000 - Specialties:

- Fire extinguishers as required by code
- Code compliance signage

Division 110000- Loading Dock Equipment:

- Twenty (20) edge of dock levelers
- Twenty (20) dock seals

Division 210000 - Fire Protection:

- Wet type ESFR sprinkler system, 1,000 gpm
-

EXHIBIT D - LANDLORDS WORK

Division 220000 - Plumbing:

- Domestic water service with meter & backflow prevention
- Below grade sanitary piping for breakroom & bathrooms
- Domestic hot & cold water distribution
- Floor drains in bathrooms
- Roof drains & below grade piping
- Sanitary risers & vents
- Valves, stops & trims
- Natural gas piping to heating equipment
- Plumbing fixtures
 - Ten (10) waterclosets
 - Ten (10) showers
 - Sinks
 - Electric water heater

Division 230000- HVAC:

- Gas fired Cambridge air rotation units, heat only
- Electric unit heaters for mechanical rooms
- High efficiency gas furnaces/ split systems at break room & bathrooms
- Break room & bathroom exhaust
- Roof mounted packaged DX cooling units - fourteen (14) 20 ton units

Division 260000 - Electrical:

- Temporary power & lighting during construction
- New 2,000 amp, 277/480v, 3 phase electrical service, main switchgear, step down transformers & paneling
- Power distribution & outlets
- Lighting & switching
 - Light fixtures to be LED with occupancy sensors throughout
- Power & electrical connections to heating & ventilation equipment
- Exterior building lighting
- Site lighting

Division 283123 - Fire Alarm System:

- Addressable fire alarm system per code

Division 300000 - Sitework:

- Clearing & grubbing
 - SWPPP/erosion controls & SWPPP inspections
 - Strip & stock pile topsoil
 - Cut/fill existing site to meet new grade requirements
 - Spread topsoil from stockpile
 - Excavation & backfill of foundations & underground plumbing
 - Stabilization fabric for asphalt pavement & site concrete
 - Sub base for building slab on grade, asphalt pavement & site concrete
-

- Asphalt paving with associated pavement marking & traffic signage as specified
- Heavy duty asphalt paving at truck areas as specified
- Storm sewer system including excavation, backfill, piping, infiltration & drainage structures
- Gravity sanitary sewer system including excavation, backfill, piping & cleanout assembly
- New water service including excavation, backfill & piping
- Fire hydrants as required
- Excavation & backfill for gas service trench (gas piping and meter by gas provider)
- New electrical service including excavation, backfill & conduit
- Transformer & generator pads
- Site lighting including excavation, backfill, concrete bases, wiring & fixtures
- Concrete curbing
- Concrete sidewalks at building entrance
- Concrete dumpster pad & dumpster enclosure
- Rake, fertilize, seed & mulch lawn areas
- Landscaping/plantings
- Commercial grade security fencing & gates at select locations
- Commercial grade chain link at SWPPP basins
- With the delivery of Phase I, 300 parking spaces will be provided
- At the culmination of Phase I, II & III, the project will provide for a total of 600 parking spaces, 25 tractor trailer parking spaces & a one acre laydown area.

Division 400000 - Allowances:

- Tenant fit-up allowance: \$ 600,000.
Fit-up allowance may extend beyond Phase I initial occupancy

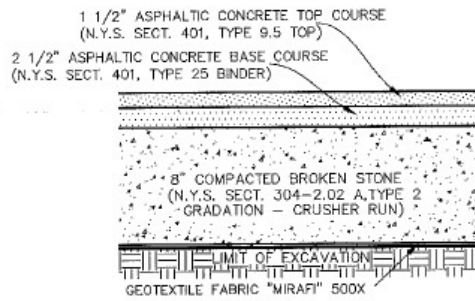
Exclusions:

- Payment & performance bonds
 - Affirmative action goals for M/WBE & veteran participation
 - Monument & building signage
 - Generator
 - Security, surveillance & access control
 - Tel/data equipment & cabling
 - Transporting, unloading, hoisting, distribution, installation & final connections of new & existing owner supplied equipment
 - FF&E
 - In rack fire suppression
 - Office fit-up
 - Floor/ trench drains at warehouse/ manufacturing
 - Compressed air, hydrogen, & other specialty piping
 - Air compressor
 - Hydrogen tank/ pad
 - BMS system
 - Lighting controls
-

EXHIBIT D - LANDLORDS WORK

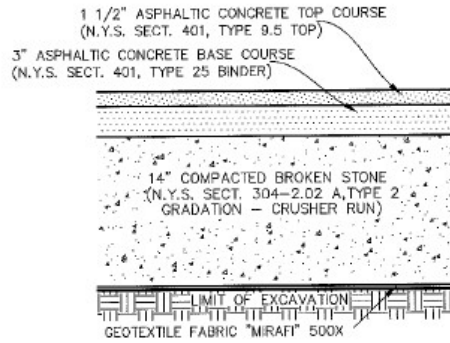
- Electrical distribution
 - Solar panels
 - Mezzanines / preparations for future mezzanines
 - Block heater(s)
 - Fuel tank(s)
 - Facility garage (service/ maintenance garage)
 - Security building / guard shack
 - Traffic control / barriers
 - Safety showers / eye wash stations
 - Canopy at Laydown area
 - Pedestrian Bridge
 - Test & Verification Room & systems
 - Concrete dock / landing pads
-

EXHIBIT D - LANDLORDS WORK



LIGHT DUTY PAVEMENT DETAIL

NOT TO SCALE



HEAVY DUTY PAVEMENT DETAIL

NOT TO SCALE

EXHIBIT D - LANDLORDS WORK

Building Standards & Scope of Work

Phase II

The Office Building

Plug Power

Vista Park

Bethlehem, New York

November 29, 2021

The following represents the anticipated building standards and scope of work to construct a new 50,000 SF, two-story open office facility in the Vista Park located in Bethlehem, New York. All work will be performed in a professional, warrantable and workman like manor and in full compliance with OSHA requirements and NYS labor laws for a private construction project

Division 010000 - General Conditions:

- Architectural & structural design
- Site/civil engineering
- MEP Design
- Wetland delineation
- Geotechnical engineering
- Project management
- Full-time field supervision
- Design development (pre-construction support)
- Safety
- Temporary field office
- Postal & printing costs
- Survey & layout
- Temporary facilities
- Weekly cleaning
- Final cleaning
- Dumpster(s)
- General liability insurance
- Builders risk insurance
- Building permit

Division 030000 - Concrete & Reinforcement:

- Cast-in-place concrete footings, foundations walls, & isolated piers
 - 4" slab on grade with WWF 6 x 6 W2.9 x W2.9, 4,000 psi throughout
 - 3-½" concrete slab on deck at second floor
 - Concrete pan fill stairs
 - Cast-in-place concrete elevator pit/ foundation
 - Concrete steel reinforcing at footings & foundations
 - Rigid foundation insulation per code
-

- Concrete pads at building entrances, dumpster, transformer, etc.
- Concrete walks to building main entrances

Division 050000 - Structural Steel & Metals:

- Structural steel metal frame, columns, bracing, purlins, girts, bar joists, metal deck & erection
- Column spacing 30' x 30' (approximate, reference plans)
- 14'± floor to floor height (approximate, reference plans)
- Metal canopy systems at main entrance & exit doors
- Steel pan stairs & associated railings
- Ships ladder at roof

Division 060000 - Wood & Plastics:

- Miscellaneous wood blocking at mechanical rooms / bathrooms
- Wood blocking at roof

Division 070000 - Thermal & Moisture Protection:

- Metal wall panels and wall insulation
- Membrane roofing & R-30 rigid roof insulation over metal deck with associated copings, flashings & accessories for a complete warrantable system, internally drained roof system
- Canopy roofing at exit doors
- Joint sealants & caulking
- Roof hatch

Division 080000 - Doors, Specialty Doors & Windows:

- Exterior hollow metal doors, hollow metal frames & commercial hardware
- Rated interior MEP room hollow metal doors, hollow metal frames & commercial hardware
- Aluminum & glass entry doors & storefront
- Aluminum & glass windows
- Aluminum solar shades as indicated

Division 090000 - Finishes:

- Painting hollow metal doors & frames
- Paint miscellaneous steel

Division 100000 - Specialties:

- Fire extinguishers as required by code
- Code compliance signage

Division 140000- Elevators:

- One (1) 2,500 lb. two stop elevator
-

Division 210000 - Fire Protection:

- Wet type NFPA 13 sprinkler system
- Semi recessed heads

Division 220000 - Plumbing:

- Domestic water service into office area
- Below grade sanitary piping
- Domestic hot & cold water distribution
- Floor drains in bathrooms/ mechanical rooms
- Roof drains & below grade piping
- Sanitary risers & vents
- Valves, stops & trims
- Natural gas piping to roof mounted heating equipment
- Electric water cooler
- Bathroom plumbing fixtures per code
- Twelve (12) waterclosets
- Sinks
- Electric water heater

Division 230000 - HVAC:

- Packaged gas fired roof top units for heating, cooling & ventilation
- Exhaust fans at bathrooms

Division 260000 - Electrical:

- Temporary power & lighting during construction
- High & low voltage panels & transformer fed from Phase I electrical service entrance
- Power & electrical connections to heating & ventilation equipment
- Exterior building lighting
- Site lighting

Division 283123- Fire Alarm System:

- Addressable fire alarm system per code

Division 300000 - Sitework:

- Clearing & grubbing
 - SWPPP/erosion controls & SWPPP inspections
 - Strip & stock pile topsoil
 - Cut/fill existing site to meet new grade requirements
 - Spread topsoil from stockpile
 - Excavation & backfill of foundations & underground plumbing
 - Stabilization fabric for asphalt pavement & site concrete
 - Sub base for building slab on grade, asphalt pavement & site concrete
 - Asphalt paving with associated pavement marking & traffic signage as specified
 - Heavy duty asphalt paving at truck areas as specified
-

EXHIBIT D - LANDLORDS WORK

- Storm sewer system including excavation, backfill, piping, infiltration & drainage structures
- Gravity sanitary sewer system including excavation, backfill, piping & cleanout assembly stubbed into building
- Fire hydrants as required
- Site lighting including excavation, backfill, concrete bases, wiring & fixtures
- Concrete curbing
- Concrete sidewalks at building entrance
- Rake, fertilize, seed & mulch lawn areas
- Landscaping/plantings
- Commercial grade chain link at SWPPP basins
- At the culmination of Phase I, II & III, the project will provide for a total of 600 parking spaces, 25 tractor trailer parking spaces & a one acre laydown area.

Division 400000 - Allowances:

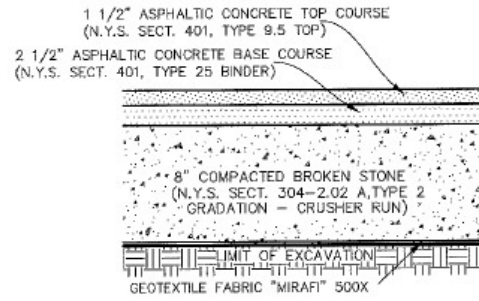
- Tenant fit-up allowance: \$ 2,500,000.
Fit-up allowance may extend beyond Phase II initial occupancy

Exclusions:

- Payment & performance bonds
- Affirmative action goals for M/WBE & veteran participation
- Monument & building signage
- Generator
- Security, surveillance & access control
- Tel/data equipment & cabling
- Transporting, unloading, hoisting, distribution, installation & final connections of new & existing owner supplied equipment
- FF&E
- BMS system
- Lighting controls
- Electrical distribution
- Solar panels
- Mezzanines/ preparations for future mezzanines
- Block heater(s)
- Fuel tank(s)
- Facility garage (service/ maintenance garage)
- Security building / guard shack
- Traffic control / barriers
- Safety showers / eye wash stations
- Canopy at Laydown area
- Pedestrian bridge
- Test & Verification Room & systems
- Concrete dock/ landing pads

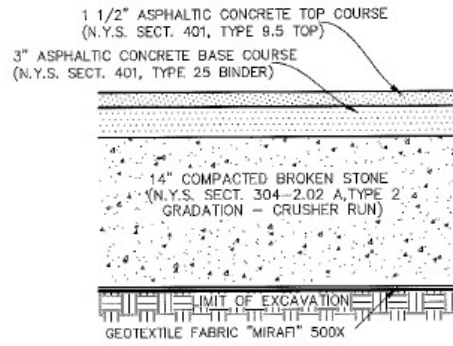
END

EXHIBIT D - LANDLORDS WORK



LIGHT DUTY PAVEMENT DETAIL

NOT TO SCALE



HEAVY DUTY PAVEMENT DETAIL

NOT TO SCALE



EXHIBIT D - LANDLORDS WORK

Building Standards & Scope of Work
Phase III
The Service Building

Plug Power
Vista Park
Bethlehem, New York

November 29, 2021

The following represents the anticipated building standards and scope of work to construct a new 100,000 SF, one-story open warehouse/service facility in the Vista Park located in Bethlehem, New York. All work will be performed in a professional, warrantable and workman like manor and in full compliance with OSHA requirements and NYS labor laws for a private construction project

Division 010000 - General Conditions:

- Architectural & structural design
- Site/civil engineering
- MEP Design
- Wetland delineation
- Geotechnical engineering
- Project management
- Full-time field supervision
- Design development (pre-construction support)
- Safety
- Temporary field office
- Postal & printing costs
- Survey & layout
- Temporary facilities
- Weekly cleaning
- Final cleaning
- Dumpster(s)
- General liability insurance
- Builders risk insurance
- Building permit

Division 030000 - Concrete & Reinforcement:

- Cast-in-place concrete footings, foundations walls, & isolated piers
 - 6" slab on grade with WWF 6 x 6 W2.9 x W2.9, 4,000 psi throughout
 - Concrete steel reinforcing at footings & foundations
 - Rigid foundation insulation per code
 - Concrete pads at building entrances, dumpster, transformer, etc.
 - Concrete walks to building main entrances
-

EXHIBIT D - LANDLORDS WORK

Division 050000- Structural Steel & Metals:

- Structural steel metal frame, columns, bracing, purlins, girts, bar joists, metal deck & erection
- Column spacing 50'± x 50'
- 30' clear ceiling height minimum
- Exposed structure to be prime painted
- Metal canopy systems at exit doors
- Pipe bollards at grade sectional doors
- Miscellaneous steel framing at sectional dock & sectional grade doors

Division 060000 - Wood & Plastics:

- Miscellaneous wood blocking at mechanical rooms
- Wood blocking at roof

Division 070000- Thermal & Moisture Protection:

- Metal wall panels and wall insulation
- Membrane roofing & R-30 rigid roof insulation over metal deck with associated copings, flashings & accessories for a complete warrantable system, internally drained roof system
- Canopy roofing at exit doors
- Joint sealants & caulking

Division 080000 - Doors, Specialty Doors & Windows:

- Exterior hollow metal doors, hollow metal frames & commercial hardware
- Rated interior MEP room hollow metal doors, hollow metal frames & commercial hardware
- Aluminum & glass entry doors & storefront
- Aluminum & glass windows
- Six (6) 9' x 10' sectional dock doors, manual operation
- One (1) 12' x 14' sectional grade door, manual operation

Division 090000 - Finishes:

- Painting hollow metal doors & frames
- Paint miscellaneous steel

Division 100000 - Specialties:

- Fire extinguishers as required by code
- Code compliance signage

Division 110000 - Loading Dock Equipment:

- Six (6) edge of dock levelers
- Six (6) dock seals

Division 210000- Fire Protection:

- Wet type ESFR sprinkler system, 1,000 gpm
-

Division 220000 - Plumbing:

- Domestic water service to building
- Roof drains & below grade piping
- Natural gas piping to heating equipment
- Plumbing fixtures
 - Ten (10) waterclosets
 - Sinks

Division 230000- HVAC:

- Gas fired Cambridge air rotation units, heat only
- Electric unit heaters for mechanical rooms
- Roof mounted packaged DX cooling units - seven (7) 20 ton units

Division 260000 - Electrical:

- Temporary power & lighting during construction
- High & low voltage panels & transformer fed from Phase I electrical service entrance
- Power distribution & outlets
- Lighting & switching
 - Light fixtures to be LED with occupancy sensors throughout

- Power & electrical connections to heating & ventilation equipment
- Exterior building lighting
- Site lighting

Division 283123 - Fire Alarm System:

- Addressable fire alarm system per code

Division 300000 - Sitework:

- Clearing & grubbing
 - SWPPP/erosion controls & SWPPP inspections
 - Strip & stock pile topsoil
 - Cut/fill existing site to meet new grade requirements
 - Spread topsoil from stockpile
 - Excavation & backfill of foundations & underground plumbing
 - Stabilization fabric for asphalt pavement & site concrete
 - Sub base for building slab on grade, asphalt pavement & site concrete
 - Asphalt paving with associated pavement marking & traffic signage as specified
 - Heavy duty asphalt paving at truck areas as specified
 - Storm sewer system including excavation, backfill, piping, infiltration & drainage structures
 - Gravity sanitary sewer system including excavation, backfill, piping & cleanout assembly stubbed into building
 - Fire hydrants as required
 - Site lighting including excavation, backfill, concrete bases, wiring & fixtures
 - Concrete curbing
 - Concrete sidewalks at building entrance
-

EXHIBIT D - LANDLORDS WORK

- Rake, fertilize, seed & mulch lawn areas
- Landscaping/plantings
- Commercial grade security fencing & gates at select locations
- Commercial grade chain link at SWPPP basins
- At the culmination of Phase I, II & III, the project will provide for a total of 600 parking spaces, 25 tractor trailer parking spaces & a one acre laydown area.

Division 400000 - Allowances:

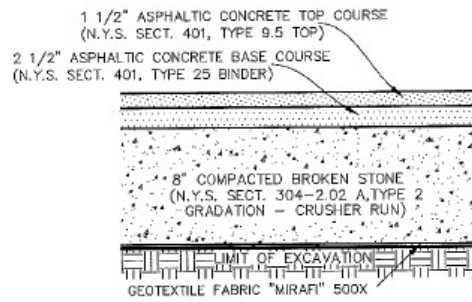
- Tenant fit-up allowance:\$ 300,000.
Fit-up allowance may extend beyond Phase III initial occupancy

Exclusions:

- Payment & performance bonds
- Affirmative action goals for M/WBE & veteran participation
- Monument & building signage
- Generator
- Security, surveillance & access control
- Tel/data equipment & cabling
- Transporting, unloading, hoisting, distribution, installation & final connections of new & existing owner supplied equipment
- FF&E
- In rack fire suppression
- Office fit-up
- Floor/ trench drains at warehouse/ manufacturing
- Compressed air, hydrogen, & other specialty piping
- Air compressor
- Hydrogen tank/ pad
- BMS system
- Lighting controls
- Electrical distribution
- Solar panels
- Mezzanines / preparations for future mezzanines
- Block heater(s)
- Fuel tank(s)
- Facility garage (service/ maintenance garage)
- Security building/ guard shack
- Traffic control/ barriers
- Safety showers / eye wash stations
- Canopy at Laydown area
- Pedestrian bridge
- Test & Verification Room & systems
- Concrete dock/ landing pads

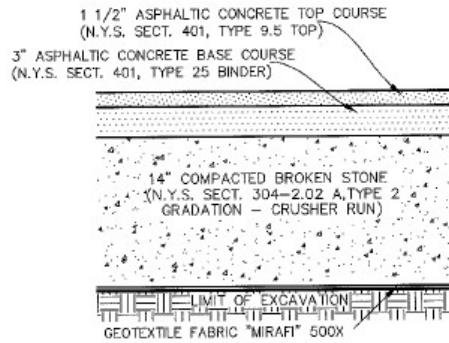
END

EXHIBIT D - LANDLORDS WORK



LIGHT DUTY PAVEMENT DETAIL

NOT TO SCALE



HEAVY DUTY PAVEMENT DETAIL

NOT TO SCALE



EXHIBIT E

SUBORDINATION NON DISTURBANCE AGREEMENT

(“Mortgagee”)

and

(“Tenant”)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

_____, 20__

This instrument affects real property situated, lying and being in the City of _____, County of _____, State of New York
at _____.

Section:
Volume:
Block(s):
Lot(s):

RECORD AND RETURN TO:

**NO MORTGAGE RECORDING TAX IS PAYABLE WITH
RESPECT TO THIS AGREEMENT. NOTHING IN THIS
AGREEMENT IS INTENDED TO EVIDENCE OR SECURE
ANY INDEBTEDNESS OR TO CREATE ANY LIEN.**

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of _____, 20__ (the "Effective Date"), between _____("Mortgagee"), and __, with an address at __("Tenant"), with reference to the following facts:

A. _____, with an address at _____ ("Landlord"), owns the fee interest in real property located at _____, City of _____, County of __, State of New York (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord Premises"), as more particularly described in Schedule A.

B. Mortgagee has made a loan to Landlord in the original principal amount of \$_____(the "Loan").

C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Mortgage, dated as of , 2012, in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, restated, or otherwise changed from time to time, the "Mortgage") to be recorded in the Official Records of the County of __, State of New York (the "Land Records").

D. Pursuant to a Lease dated as of _____(the "Lease"), Landlord demised to Tenant a portion of Landlord's Premises ("Tenant's Premises"). Tenant's Premises are commonly known as

E. A memorandum of the Lease may be recorded in the Land Records prior to the recording of this Agreement.

F. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee

agree:

1. *Definitions.*

The following terms shall have the following meanings for purposes of this Agreement.



1.1 *Construction-Related Obligation.* A “Construction- Related Obligation” means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition or other improvements or work at Landlord’s Premises, including Tenant’s Premises. “Construction-Related Obligations” shall not include (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 *Foreclosure Event.* A “Foreclosure Event” means (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Landlord becomes owner of Landlord’s Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in Landlord’s Premises in lieu of any of the foregoing.

1.3 *Former Landlord* A “Former Landlord” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 *Offset Right.* An “Offset Right” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord’s breach or default under the Lease.

1.5 *Rent.* The “Rent” means any fixed rent, base rent or additional rent under the Lease.

1.6 *Successor Landlord* A “Successor Landlord” means any party that becomes owner of Landlord’s Premises as the result of a Foreclosure Event.

1.7 *Termination Right.* A “Termination Right” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

2. *Subordination.*

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. *Non-disturbance, Recognition and Attornment.*

3.1 *No Exercise of Mortgage Remedies Against Tenant.* So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an "Event of Default"), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 *Non-disturbance and Attornment.* If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 *Further Documentation.* The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. *Protection of Successor Landlord.* Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable or bound by any of the following matters:

4.1 *Claims Against Former Landlord.* Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.)

4.2 *Prepayments.* Any payment of Rent that Tenant may have made to Former Landlord more than thirty days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3 *Payment: Security Deposit.* Any obligation (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a Construction-Related Obligation.

4.4 *Modification, Amendment or Waiver.* Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Mortgagee's written consent.

4.5 *Surrender, Etc.* Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.6 *Construction-Related Obligations.* Any Construction-Related Obligations of Former Landlord except as expressly provided for in Schedule B (if any) attached to this Agreement.

5. *Exculpation of Successor Landlord* Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assignment's) interest, in any, in Landlord's Premises from time to time, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. *Mortgagee's Right to Cure.*

6.1 *Notice of Mortgagee.* Notwithstanding anything to the contrary in the Lease or this Agreement or the Lease, before exercising any Termination Right or Offset Right or cancellation right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 *Mortgagee's Cure Period.* After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

6.3 *Extended Cure Period.* In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Mortgagee undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time (the "Extended Cure Period") as Mortgagee may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. *Confirmation of Facts.* Tenant represents to Mortgagee and to any Successor Landlord, in each case as of the Effective Date:

7.1 *Effectiveness of Lease.* The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease. No unfulfilled conditions exist to Tenant's obligations under the Lease.

7.2 *Rent.* Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

7.3 *No Landlord Default.* To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such breach or default.

7.4 *No Tenant Default.* Tenant is not in default under the Lease and has not received any uncured notice of any default to Tenant under the Lease.

7.5 *No Termination.* Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

7.6 of the Lease was _____. *Commencement Date.* The "Commencement Date"

7.7 *Acceptance.* Except as set forth in Schedule B (if any) attached to this Agreement: (a) Tenant has accepted possession of Tenant's Premises; and (b) Landlord has performed all Construction-Related Obligations related to Tenant's initial occupancy of Tenant's Premises and Tenant has accepted such performance by Landlord.

7.8 *No Transfer.* Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein, other than sublease(s) made in compliance with the Lease.

7.9 *Due Authorization.* Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

8. *Miscellaneous.*

8.1 *Notices.* All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

8.2 *Successors and Assigns.* This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

8.3 *Entire Agreement.* This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

8.4 *Interaction with Lease and with Mortgage.* If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

8.5 *Mortgagee's Rights and Obligations.* Except as expressly provided for in this Agreement Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligation of Successor Landlord provided for in this Agreement.

8.6 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding its principles of conflict of laws.

8.7 *Amendments.* This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

8.8 *Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8.9 *Mortgagee's Representation.* Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

[Nothing Further Contained on this Page]

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Tenant as of the Effective Date.

MORTGAGEE:

By: _____
Name:
Title:

TENANT:

By: _____
Name:
Title:

Dated _____, 20__.

ACKNOWLEDGMENTS

STATE OF NEW YORK)
)
COUNTY OF ALBANY)
)
)
)
)
)
)

On the ___ day of _____, 20___, before me the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
)
COUNTY OF ALBANY)
)
)
)
)
)
)

On the ___ day of _____, 20___, before me the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public

Schedule A

Description of Landlord's Premises

Schedule B

Construction-Related Obligations

A. Performed as of Effective Date.

Construction-Related Obligations Remaining to be

NONE

B. Obligation After Attornment.

Successor Landlord's Construction-Related

NONE

EXHIBIT F

TENANT ESTOPPEL CERTIFICATE

_____, 20__

RE: Property located at: __("Premises").

Gentlemen:

You have advised us that _____(the "Bank") is planning to make a loan secured by a first mortgage on the above captioned property in which the undersigned presently occupies space under a lease dated _____(the "Lease") between the undersigned (the "Tenant") and __, a New York limited liability company (the "Landlord").

Incident to the Bank's loan and mortgage, and at your request, we hereby warrant, represent and certify to the Bank as follows:

1. The undersigned is, as of the date of this letter, the holder of the Tenant's interest under the Lease, and the Lease has not been modified, amended or supplemented in any manner except for:

_____.

The undersigned will not enter into any modification of the Lease without notifying the Bank in the manner set forth hereinbelow.

2. The term of the Lease is presently scheduled to expire on _____, __. If there are any rights of extension or renewal remaining under the terms of the Lease, the same have not, as of the date of this letter, been exercised except for _____.

There are 2 options for the undersigned to extend the current term of the Lease for five (5) years each with the first such option commencing on _____, __.

3. The undersigned, as the holder of the Tenant's interest under the Lease, is in occupancy of all of the Premises covered by the Lease and is actively conducting its business therein, which business is the use stipulated as the use of the Premises demised by the Lease under the terms thereof and the Lease is in full force and effect. The Tenant has not sublet all or any portion of the Premises, or assigned or otherwise transferred its interest in the Lease or the Premises, except for: _____

4. The undersigned is current in the payment of all fixed rent and other charges due to be paid under the Lease, with minimum rent paid, in full, for the period ending _____, ____.

The monthly (i.e. fixed) rent is \$ _____. No rent or other sum payable under the Lease is being paid in arrears. The undersigned has no defenses, counterclaims or rights of offset against any rents or other sums payable under the Lease.

No rent or other sum payable under the Lease has been paid in advance of the due date thereof, and we hereby agree with you that we shall not pay any minimum rent or other sum due to be paid under the Lease more than one (1) month in advance of the due date thereof.

5. All of the obligations on the part of the Landlord under the Lease for the performance of any work or installation of any equipment have been carried out, and the undersigned has no claim against the holder of the Landlord's interest for the incomplete performance of any work or installation, or on account of any claimed defect therein.

As of the date of this letter, neither the undersigned nor the holder of the Landlord's interest under the Lease has failed to make any payment or to perform any obligation which each has to the other.

6. If the undersigned should assert a claim that the holder of the Landlord's interest under the Lease has (i) failed to perform an obligation to the undersigned under the terms of the Lease or otherwise, or (ii) is in default under the Lease in any respect, written notice thereof shall promptly be furnished to the Bank, by certified mail to the following address: _____, _____, Attention: _____, and the undersigned agrees that it will not exercise any rights which it might otherwise have on account of such failure or default until such notice has been given, and the Bank has had the same opportunity to cure any such failure as the holder of the Landlord's interest under the Lease may have. The person signing this letter on behalf of the Tenant is a duly authorized representative and agent of the Tenant.

7. A security deposit of \$n/a has been paid in connection with the Lease. In the event the Bank succeeds to Landlord's interest under the Lease, Bank shall not be obligated to the undersigned for such security deposit unless such security deposit was actually received by the Bank.

8. Tenant has not filed and is not the subject of any filing for bankruptcy, arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar state or federal law.
-

The undersigned acknowledges that the Bank will be relying upon the undersigned's representations contained in this letter in proceeding with the loan and mortgage as described above.

Very truly yours,

EXHIBIT G

PILOT SCHEDULE

11-22-21

PILOT YEAR	LAND ASSESSMENT SAVINGS	IMPROVEMENTS ASSESSMENT SAVINGS*
1	0%	100%
2	0%	100%
3	0%	90%
4	0%	80%
5	0%	70%
6	0%	60%
7	0%	50%
8	0%	40%
9	0%	30%
10	0%	20%
11	0%	10%
12	0%	0%

*Special municipal assessments, including but not limited to, Water, Sewer, Ambulance, Fire, Lighting and Library, are not eligible for assessment savings.

EXHIBIT H
Green Building Practices

Green Building Practices in Construction

BBL is a proud member of the USGBC and has constructed numerous LEED certified buildings. We understand that even if a client may not be seeking LEED certification, most are still interested in supporting environmentally responsible development and energy efficient construction. As such, we typically incorporate the following into a majority of our projects.

Common Green Building Practices

- Energy efficient code compliance building envelope
 - LED lighting
 - Occupancy sensors
 - New materials composing of recycled content
 - Low volatile organic compound (VOC) materials
 - High efficiency HVAC systems
 - Energy star appliances
 - Low-flow plumbing fixtures
 - Construction waste management (separating recyclable construction waste)
 - Bike racks
-

FIRST AMENDMENT TO SUBLEASE AGREEMENT

FIRST AMENDMENT TO SUBLEASE AGREEMENT (“Amendment”), made as of the 26th day of May, 2022, by and between Campus Associates XII LLC, having its principal office at 302 Washington Avenue Extension, Albany, New York 12203 (“Landlord”) and Plug Power, Inc. a New York corporation with an address at 968 Albany Shaker Road, Latham, New York 12110 (“Tenant”).

WHEREAS, Vista Real Estate Development LLC and Tenant entered into that certain Sublease Agreement dated December 15, 2021 (“Sublease”) with respect to a portion of the land and a 350,000 sf facility located at 125 Vista Boulevard, Town of Bethlehem, County of Albany, State of New York (“Premises”); and

WHEREAS, Vista Real Estate Development LLC assigned all right, title and interest in and to the Sublease to Landlord; and

WHEREAS, pursuant to Section 4.01(A) of the Sublease Tenant desires to request the Additional Allowance in the amount of \$2,000,000 from Landlord; and

WHEREAS, the parties desire to memorialize the Additional Allowance and resulting additional rent payments due therein; and

WHEREAS, Tenant desires to modify Tenant’s Work under the Lease which will necessarily modify Landlord’s Work as well.

NOW THEREFORE, the parties agree as follows:

- I. All capitalized terms used herein but not specifically defined shall have the meaning set forth in the Sublease
 2. Pursuant to Section 4.01(A) of the Sublease, Tenant has exercised its option to increase the Allowance by an additional \$2,000,000. The Additional Allowance shall be repaid by Tenant to Landlord as follows and shall be considered rent under the Lease. Commencing on the Full Rent Commencement Date, Tenant shall begin repayment of the \$2,000,000 at a 4.5% annual interest rate over the 10-year term as follows which amount shall be considered additional rent under the Sublease: Commencing on the Full Rent Commencement Date, Tenant shall pay to the Landlord \$248,732.00 per annum payable in equal monthly installments of \$20,727.68. Such payments shall be due and payable on the first day of each month during the term along with payments of base rent. Portions a month shall be prorated. In the event the \$2,000,000 is not fully repaid to the Landlord prior to the expiration or earlier termination of this Sublease, the remaining balance shall be paid to the Landlord, in full, as of the date of termination or earlier expiration of the Sublease. The parties agree this payment obligation may be assigned by the Landlord to a third party without assigning the remainder of the Lease or its obligations. This payment obligation shall survive the termination or expiration of the Sublease.
-

3. Section 4.02 of the Lease provides that Substantial Completion of Phase shall occur on or before July 31, 2022 and Substantial Completion of Phase 2 and Phase 3 shall occur on or before December 31, 2022. A portion of Tenant's Work has caused changes to the Landlord's Work and such changes known to date are identified on Exhibit 1 attached hereto. Landlord and Tenant hereby acknowledge that one of such changes requested by Tenant has been confirmed to cause a delay of up to 14 days in the delivery of Phase 2 and Phase 3, and others may result in additional delays in the Substantial Completion of Landlord's Work. Therefore, the parties agree to update and review Exhibit 1 bi-weekly to ensure accurate and timely communication of any potential delays. Further, Tenant agrees that if the Landlord or Landlord's contractor confirms that a delay to the date of Substantial Completion will be caused as a direct result of a Tenant's Work item, Tenant shall have the option to either: (1) work with Landlord and Landlord's contractor to modify or eliminate the Tenant's Work item in order to eliminate the delay, or (2) waive any penalty to Landlord for failing to timely achieve Substantial Completion as a result of the Tenant's Work item and agree that such change shall be deemed to be a Tenant Delay as set forth in the Lease.
4. Section 3.01 of the Lease provides Tenant with an option to reduce its Annual Rent with a payment to Landlord not to exceed \$5,000,000. Tenant waives this option.
5. The following shall be added to Section 13.04 of the Lease: As part of Tenant's Work, Tenant is installing a fire wall surrounding the Phase 2 service building testing and verification area in the Building ("Fire Wall"). At Landlord's option at the expiration or earlier termination of the Lease, Tenant shall remove the Fire Wall and repair and restore the Building and roof as may be necessary ("Fire Wall Removal Option"). Should Landlord desire to exercise the Fire Wall Removal Option, Landlord shall provide written notice to Tenant as soon as possible, but in no event later than seven (7) days following the date of expiration or earlier termination of the Lease. Tenant shall then have sixty (60) days to remove the Fire Wall and repair and restore the Building and roof as may be necessary. The Parties may mutually agree to extend Tenant's time to remove the Fire Wall and repair and restore the Building and roof. This provision shall survive the expiration or earlier termination of the Lease.
6. Except as expressly set forth herein, all terms and conditions of the Sublease shall remain unchanged and in full force and effect.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth above,

Plug Power, Inc.

By: /s/ Matthew L. Savoie
Name: Matthew L. Savoie
Title: Director of Facilities

Campus Associates XII LLC

THE JOSEPH R. NICOLLA
REVOCABLE TRUST U/A DATED
MAY 9, 2014, AS AMENDED AND
RESTATED

By: /s/ Joseph R. Nicolla
Name: Joseph R. Nicolla
Title: Trustee

Vista Real Estate Development LLC

By: /s/ Joseph R. Nicolla
Name: Joseph R. Nicolla
Title: Authorized Representative

Exhibit 1
 Tenant's Work which impacts Landlord's Work

Plug Power
 Schedule Vulnerability Summary
 1/31/2022 (Rev 5/19/22)

The following is a list of items that have been identified as potentially having an impact to the building core and shell schedule. Items that are closed may be reopened if new information is received that may present a potential schedule impact.

Description	Origination Date	Potential Impact	Resolution/Mitigation
1 Electrical Service Gear Upgrade/Modifications <ul style="list-style-type: none"> • Design to upgraded electrical service size • Added complexity extended material delivery dates 	12/1/2021	TBD	<ul style="list-style-type: none"> • Expedited fee agreed to • Modification per National Grid • complicated submittal approval
Gear received in April	5/2/2022	CLOSED	<ul style="list-style-type: none"> • Still need sequencing letter • Expected ship date May 2022 • No known impact
2 National Grid <ul style="list-style-type: none"> • With the modification to the electrical service design, original ESC order requires additional information and design before National Grid will release • National Grid notorious for delays • Intertie discussions add complexity • Need gas loads from DPS Mech / Elec equip. Further delays 	11/30/2021	TBD	<ul style="list-style-type: none"> • Need to finalize load letter and sequencing letter ASAP • EYP/Plug Power to finalize by 2/4/2022 • Sequence of operations
National Grid with Dual Feeds/Infrastructure Upgrades <ul style="list-style-type: none"> • Temp power to permanent power? • Discussion on going concerning elevated gas pressure 	3/2/2022		<ul style="list-style-type: none"> • Outcome by date desired, not guaranteed
	3/25/2022		
	5/6/2022		<ul style="list-style-type: none"> • No known impact
3 Fire Protection/Fire Pump <ul style="list-style-type: none"> • Request to investigate higher hazard classification and densities at racking and hydrogen areas • Modify original fire pump from 750 gpm to 1,000 gpm • Delays likely that will impact CO or Tenant Im. 	1/3/2022	TBD	<ul style="list-style-type: none"> • Concern with lead time/delay dated for fire pump • Locking to finalize submittal and material order ASAP • Need to verify quoted delivery date • Quoted 28wk lead time • Core and shell CO w/o Pump OK
	2/7/2022		<ul style="list-style-type: none"> • No known impact
		5/8/2022 CLOSED Pending Bldg Dept. ok	

4	Office Façade Upgrades/Modifications	1/10/2022	TBD	<ul style="list-style-type: none"> Need to define lead time on curtainwall system Curtainwall on schedule Impact to building shell "dry in date" No known impact
		<ul style="list-style-type: none"> Revision to façade introduced additional curtainwall products/systems Added complexity to framing, cladding and roofing systems 		
5	Type 1A Construction Upgrade	1/24/2022	CLOSED	<ul style="list-style-type: none"> Additional spray fireproofing delaying other critical path trades Additional time for sheer volume of work
		<ul style="list-style-type: none"> With the upgrade to the construction type, Plug Power would gain additional hydrogen capacities and greater design flexibilities Type 1A would add spray fireproofing of steel/structure 		1/31/2022
		<ul style="list-style-type: none"> Decision by Plug not to pursue. Closed - no impact 		
6	Revision to Underground Plumbing	2/16/2022	TBD	<ul style="list-style-type: none"> Expediting design modifications with Collett Mechanical *2/28/22 - Collett & BGL released to redesign/install based on 2/23/22 TI plans* - now recluded
		<ul style="list-style-type: none"> Changes require redelign of finalized sanitary permit plans approved 1/10/22 Office area still on hold as of 3/9/22 despite approval deadline of 12/31/22 		3/28/2022
		<ul style="list-style-type: none"> Need to understand impact of incomplete office on CO for phase 2 Layout of plumbing in Phases II & III still not finalized This will impact foundation/steel schedule 		5/8/2022
		<ul style="list-style-type: none"> No known impact identified 		PH 1 CLOSED PH 2 & 3 No known impact identified
7	Termination of EYP Design	2/16/2022	TBD	<ul style="list-style-type: none"> Engage DPS/CHA
		<ul style="list-style-type: none"> Impacts to building shell DPS Engaged for manufacturing schematic design Service area and office not part of current agreement 		5/8/2022
			CLOSED	<ul style="list-style-type: none"> No known impact identified

8 Fire Alarm Upgrade <ul style="list-style-type: none"> • Certificate of Occupancy cannot be issued without energized fire alarm system • Base Building Alarm system placed on hold 	1/31/2022	TBD	<ul style="list-style-type: none"> • Order of base building equipment delayed per Plug Power's direction • Investigate cost of EYP's fire alarm narrative • Approval letter issued 2/21/2022 • No direction as of 2/25/2022 • Additional breakdown of cost submitted 2/28/2022
<ul style="list-style-type: none"> • Alternate System Priced Up • Price Submitted for Approval • BBL to evaluate impact on schedule 	3/4/2022		<ul style="list-style-type: none"> • Approved 3/8/22
	5/6/2022	CLOSED	<ul style="list-style-type: none"> • No known impact
9 Service Area T&V Design	3/14/2022	TBD	<ul style="list-style-type: none"> • Possible redesign due to Hydrogen volumes • Impacts to concrete floors, steel, roof, siding • Delays to Core and Shell (approximately 2 month delay) • Need design / decision immediately
<ul style="list-style-type: none"> • Initial budget presented • BBL directed to proceed with floors and roof leaders based on T&V redesign • Decision still outstanding by Plug 	5/2/2022		
<ul style="list-style-type: none"> • Redesign option discussed, BBL to price upon receipt of concept sketches • Impact to cost and schedule by not going thru roof is lessened • Direction provided by Plug Power that BBL shall skip over steel erection in the area of the T&V room as a decision on design has not been made by Plug Power 	5/17/2022	IMPACT 14 Calendar days	<ul style="list-style-type: none"> • BBL to continue to work to minimize delay
<ul style="list-style-type: none"> • Reference BBL emails dated 5/13/22 & 5/17/22 and Plug Power email dated 5/17/22 			<ul style="list-style-type: none"> • The 14 calendar day delay does not reflect potential impacts associated with possible design changes
10 Office and Service Area TI Design Delays	3/14/2022		<ul style="list-style-type: none"> • Areas are not a priority for Plug
<ul style="list-style-type: none"> • Unclear what impact to core and shell scope 		CLOSED	
		No known impact to date	
11 Emergency Power for TI	3/14/2022		<ul style="list-style-type: none"> • No further information received • Issue was tabled with no impact (reference item No. 13)
<ul style="list-style-type: none"> • May require added underslab electric conduit for electric generator 		CLOSED	

<p>12 Gas Piping</p> <ul style="list-style-type: none"> • Goal to combine all gas piping from base building & TI • Complexity/design may impact duration to complete work • Gas piping may not be complete by 7/31/2022 	3/25/2022	TBD pending pipe fabrication done on time	• May not need gas on 8/1/2022
<p>13 Emergency Power Underlab Conduit</p> <ul style="list-style-type: none"> • Need for normal power to NW corner Elec Rm from Main Elec Rm • Underlab conduit would be shortest and least costly • Slab and subbase prep already underway • deadline for underlab conduit expired weeks ago • BBL directed to proceed 3/3/2022 	6/2/2022	CLOSED No known impact to date	<ul style="list-style-type: none"> • Installation started , unable to complete with crane contact • Continue to discuss mitigation options • BBL authorized George Martin Electric overtime work to avoid delays per Plug Power
<p>14 Conduit and Duct Bank feed to Gen Surs</p> <ul style="list-style-type: none"> • Impacts both site and building schedule • Design and routing not finalized • Plug to provide design asap • BBL to advise of impact to schedule as well as price • Ductbank to include hydrogen piping • Foundation wall will need to be exposed and cored/drilled • Plan provided by DPS conflicts w/ Plug site 	6/2/2022	CLOSED No known impact to date	<ul style="list-style-type: none"> • Issue unresolved • BBL authorized George Martin Electric overtime work to avoid delays per Plug Power
<p>15 Turnstile underlab Rough In</p> <ul style="list-style-type: none"> • Information on product or rough in still not provided by Plug • Direction was to "Box out " slab and pour later 	4/29/2022	CLOSED No known impact	• Plug ok with pouring at a later date

SECOND AMENDMENT TO SUBLEASE AGREEMENT

SECOND AMENDMENT TO SUBLEASE AGREEMENT (“Amendment”), made as of the 14th day of February, 2024, by and between Campus Associates XII LLC, having its principal office at 302 Washington Avenue Extension, Albany, New York 12203 (“Landlord”) and Plug Power Inc. having its principal office at 968 Albany Shaker Road, Latham, New York 12110 (“Tenant”).

WHEREAS, Vista Real Estate Development LLC and Tenant entered into that certain Sublease Agreement dated December 15, 2021 with respect to a portion of the land and a 350,000 sf facility located at 125 Vista Boulevard, Town of Bethlehem, County of Albany, State of New York (“Premises”); and

WHEREAS, Vista Real Estate Development LLC assigned all right, title and interest in and to the Sublease to Landlord; and

WHEREAS, Landlord and Tenant executed a First Amendment to Sublease Agreement dated May 26, 2022 (together with the Sublease Agreement the “Sublease”); and

WHEREAS, Section 10.02(B) of the Sublease contains Landlord’s obligation with respect to insurance coverage;

WHEREAS, Landlord and Tenant desire that Tenant assume the obligation to obtain and maintain some of the coverages set forth in Section 10.02(B) as more specifically set forth herein.

NOW THEREFORE, the parties agree as follows:

1. All capitalized terms used herein but not specifically defined shall have the meaning set forth in the Sublease.
2. Section 10.02(B) of the Sublease contains Landlord’s requirements for insurance during the term of the Lease. As a result of the Tenant’s operations at the Premises property insurance is difficult and very costly for the Landlord to obtain. Therefore, the parties agree that Tenant shall obtain and maintain during the Term of the Lease, the insurance coverages set forth in Section 10.02(B)(i) and (ii) of the Lease (“Property Coverage”).

The specific requirements for such coverages as of the date hereof are set forth on **Exhibit A** attached to this Amendment.

Upon execution of this Amendment Tenant shall provide to the Landlord a certificate of insurance (the “Certificate”) evidencing the required Property Coverage. The existing coverage shall not be cancelled until such time as the Certificate is delivered to and approved by the Landlord’s lender (KeyBank National Association, hereinafter “Lender”), in writing. The certificate shall name Landlord’s Lender, its successors

and/or assigns, as their interest may appear as first loss payee/mortgagee, and shall name Landlord and Vista Real Estate Development LLC (if requested by Landlord) as beneficiary and loss payee. The certificate of insurance shall confirm thirty (30) days advance written notice to the Landlord and its Lender in the event of the cancellation, for any reason except for non-payment of premium, in which case the advance written notice to the Landlord and its Lender will be then (10) days, and/or non-renewal of the coverages certified. Without request by Landlord, the certificate of insurance shall be renewed and submitted to the Landlord annually prior to the expiration of Tenant's then current commercial general liability insurance policy for the duration of the Term of this Lease.

In the event of a casualty, the deductible shall be paid by Tenant.

If Tenant fails at any time to take out, pay for, or maintain and deliver certificates or other evidence of Property Coverage acceptable to Landlord and its Lender, then Landlord, without notice to Tenant and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall not be obligated to) take out, pay for and maintain any of the Property Coverage provided for in this Amendment or, as to Landlord's Lender, in any mortgage agreement covering the Premises, and any sums paid and costs incurred by Landlord in so doing, together with interest thereon at the Lease Interest Rate shall from the date of such expenditure by Landlord until payment in full, be deemed Additional Rent.

3. Except as expressly set forth herein, all terms and conditions of the Sublease shall remain unchanged and in full force and effect. Landlord acknowledges that nothing herein, including the Lender's acceptance of the Certificate, shall modify or change any of the insurance requirements set forth in the Mortgage and loan documents entered into between Landlord and Lender.
4. Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. For purposes of this Amendment, a document (or signature page thereto) signed and transmitted by facsimile machine, email or PDF document, is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth above.

Plug Power Inc.

By: /s/ Paul Middleton

Name: Paul Middleton

Title: CFO

Campus Associates XII LLC

THE JOSEPH R. NICOLLA
REVOCABLE TRUST U/A DATED
MAY 9, 2014, AS AMENDED AND
RESTATED

By: /s/ Joseph R. Nicolla

Joseph R. Nicolla, Trustee

Exhibit A
Property Coverage

Named Insured (Borrower): Vista Real Estate Development LLC

Loan Number: 10237598

"ALL RISK" PROPERTY INSURANCE-Required coverage and conditions to be shown on the ACORD 28 Certificate

Building Limits: Sufficient to cover replacement cost without deduction for depreciation
For newly completed construction use the sum of hard and soft cost limits required under Builders Risk coverage
\$ ~~99,500,000.00~~ **\$41,500,000 for 2024**

Business Interruptions: Sufficient to cover 12 months gross stabilized rents or gross revenue ("revenue" is applicable to Healthcare loans) OR check ALS box and indicate an Extended Period of Recovery/Indemnity provision in the "Remarks" section of Acord
\$ ~~9,650,245.00~~ **\$3,807,407.16 for 2024**

Required Best Rating not less than **A:VIII** unless otherwise agreed to by Lender

Required Mortgagee provisions are to match standard clause of ISO forms or Lender's Loss Payable clause per Section D of ISO form CP 12 18 (06-07)

Required **Check** box on Acord for **Lender's Loss Payable OR Mortgagee**

Required **Send** corresponding LLP Endorsement **OR** copy of Mortgagee Clause from policy.

Required "All Risk" coverage (Marked as "Special" on Acord)

Required If coverage program is a **BLANKET** policy, **show full** policy limits along with the **value reported on property identified within full policy limit.**

Required If coverage program is a **BLANKET** policy, **state either "No Margin Clause" OR** describe the restrictions of any applicable margin clause.

Required Replacement Cost Valuation

Required No Coinsurance (marked "No" or "N/A" on the Acord). "Yes" is acceptable as long as "Agreed Value" is also marked as "Yes"

Required Agreed Value (marked "Yes" on the Acord; "N/A" is acceptable only if Coinsurance is marked "No" or "N/A".)

N/A **Disclose** any/all Deductibles and Sub-Limits such as Named Windstorm for Properties in coastal counties ("Tier 1"), Properties in counties adjacent to coastal counties ("Tier 2") and the State of Florida

Required Ordinance or Law-**SHOW** applicable limits

- *(Coverage A) Coverage for Loss to the Undamaged Portion of the Building
- *(Coverage B) Demolition Cost Coverage
- *(Coverage C) Increased Cost of Construction Coverage

N/A Terrorism Coverage - If Included **SHOW** limits

Required Boiler & Machinery or Breakdown coverage is required for buildings with boilers, elevators, or central HVAC (not required for per-unit HVAC). If included provide limits

Required If a Commercial Tenant is providing coverage per the Lease, both the Lease and Tenant's evidence of insurance must meet these requirements; provide copies of both Lease and Tenant coverage for KeyBank's review

Required Send a copy of the Tenant's Property Insurance Acord 28 Certificate naming Borrower as Additional Insured and Mortgagee as Certificate Holder. Tenant Gen'l Liability coverage is not required

Is Earthquake Insurance required? No Amount: N/A

Is Flood Insurance Required? No Special Flood Hazard Area Zone: N/A

If "Yes" provide coverage pursuant to **Notice to Borrower in Special Flood Hazard Area and requirements below.**

Additional/Alternative Flood Limits required if Zone **VE, V1-V30** N/A

When Flood Insurance Coverage is required it must be no less than the **least** of the following:

1. The total amount of the KeyBank loan and any outstanding liens that take priority over the KeyBank loan.
2. The Replacement Cost Value (RCV) of EACH building(s) improvements: a) for an existing property the Cost Approach Value from a qualified appraisal OR the insurable value from the all-risk insurance policy may be used to determine the RCV; and b) for a to-be-built project, the amount of the construction contract plus hard cost contingency can be used to determine the RCV.
3. The maximum insurance amount for building(s) available under NFIP

Mandatory **Contents** Flood Insurance Coverage must be no less than the **least** of the following:

1. The total amount of the KeyBank loan and any outstanding liens that take priority over the KeyBank loan.
2. The value of the contents with supporting evidence provided
3. The maximum amount of insurance for contents available through NFIP

ASSIGNMENT AND MODIFICATION OF GROUND LEASE PREMISES 2

THIS ASSIGNMENT AND MODIFICATION OF GROUND LEASE PREMISES 2 (this “Assignment”) dated November 1, 2023, is made by and between Campus Associates XI LLC, a New York limited liability company with an address at 302 Washington Avenue Extension, Albany, New York (“Campus Associates”), Vista Development Group, LLC a New York limited liability company with an address at 302 Washington Avenue Extension, Albany, New York 12203 (“Vista Development”) and Plug Power, Inc. a New York corporation with an address at 968 Albany Shaker Road, Latham, New York 12110 (“Plug Power”).

WHEREAS, Campus Associates and Vista Development entered into a Ground Lease Premises 2 on April 29, 2022, with respect to that certain 16.95 acre parcel of vacant land located at Vista Boulevard, Town of Bethlehem and Town of New Scotland, County of Albany, State of New York (“Ground Lease”); and

WHEREAS, Vista Development entered into an Option to Acquire Ground Lease Premises 2 with Campus Associates XII LLC dated December 15, 2021 which provided Campus Associates XII LLC an option to purchase Vista Development’s interest in the Ground Lease; and

WHEREAS, Campus Associates XII LLC subsequently entered into an Option to Purchase Ground Lease with Plug Power dated December 15, 2021, which provided Plug Power an option to purchase Campus XII LLC’s option to purchase the Ground Lease; and

WHEREAS, as of the date hereof, Plug Power exercised its option to purchase the Ground Lease interest so that the tenant’s interest in the Ground Lease will be assigned from Vista Development to Plug Power; and

WHEREAS, in addition to the assignment of the ground leasehold interest in the Ground Lease, Campus Associates and Plug Power agree to modify certain terms and conditions of the Ground Lease as expressly set forth herein.

NOW THEREFORE, the parties agree as follows:

1. **Defined Terms**: All capitalized terms used herein but not specifically defined shall have the meaning set forth in the Ground Lease.
2. **Assignment**: Vista Development hereby transfers, conveys and assigns to Plug Power all of its right, title and interest in and to the Ground Lease.
3. **Assumption**: Plug Power hereby assumes all the obligations of Vista Development arising or accruing on or after the date hereof except with respect to all taxes and operating expenses which Plug Power assumes as of August 1, 2023 under the Ground Lease and shall keep and perform all conditions and

covenants of the Ground Lease in the same manner as if Plug Power were the original tenant thereunder. Vista Development shall remain responsible for all liabilities and obligations arising or accruing under the Ground Lease prior to the date of this Assignment except with respect to the taxes and operating expenses which Plug Power assumed effective August 1, 2023.

4. Estoppel. Campus Associates and Vista Development each in their individual capacity, and collectively hereunder, hereby warrant and represent to Plug Power, and Plug Power shall be entitled to rely to its detriment on the following statement: (i) there are no other third-party contracts or lease agreements, including any amendments, nor any amendment(s) to the Ground Lease, either written or oral, existing between Campus Associates and/or Vista Development and any third party relating to the Leased Premises besides the Ground Lease; (ii) that all monies owed under the Ground Lease have been paid in a timely manner; (iii) that Vista Development has satisfied all of its obligations under the Lease through the date of this Assignment; (iv) there are not outstanding claims and/or disputes between Campus Associates and Vista Development thereunder; (v) no prepayment of any money and no deposits have been made by Vista Development to Campus Associates except as explicitly provided for in the Ground Lease; and (vi) As of the date of this Assignment, there are no defaults under the terms of the Ground Lease either by Campus Associates or Vista Development.
5. Landlord Consent: Campus Associates consents to the assignment of the Ground Lease from Vista Development to Plug Power.
6. Amendment: The Ground Lease shall be modified and amended as follows:
 - a. Plug Power executed and delivered to Campus Associates XII LLC a promissory note dated even date herewith in the principal amount of THREE MILLION THREE HUNDRED NINETY THOUSAND DOLLARS AND 00/100 (\$3,390,000.00) ("Note"). A default under the Ground Lease shall be a default under the Note and a default under the Note shall be a default under the Ground Lease.
 - b. Section 14.01 of the Ground Lease shall be deleted and replaced as follows:

"Section 14.01. Tenant on the last date of the Term or on the last day of any earlier termination of the Term covenants to surrender and deliver the Leased Premises to the Landlord. Landlord shall have the right to determine the property and Improvements which shall be removed by Tenant at the expiration or earlier termination of the Lease. This shall not apply to building improvements if any constructed on the Land which may remain in place. Title to the Improvements is now and shall be and remain in Tenant during the Lease Term. Title to the Improvements which remain on

the Leased Premises shall vest in the Landlord upon the expiration or earlier termination of the Lease Term.”

7. No Other Amendments. Except as otherwise expressly set forth herein, all terms and conditions of the Ground Lease shall remain unchanged and in full force and effect. This Assignment may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Plug Power and Campus Associates or their respective successors and permitted assigns.
8. Binding on Successors. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
9. Recording. Neither Campus Associates nor Plug Power shall record this Assignment, but at the request of Plug Power, both Campus Associates and Plug Power shall execute a memorandum documenting the existence of the Ground Lease in the county in which the Premises is located. This memorandum shall, at a minimum contain the legal description of the Leased Premises, the names of the parties to the Ground Lease, and the duration of the Ground Lease. In the event a memorandum of lease is already recorded in the county in which the Leased Premises is located, Campus Associates and Plug Power agree to execute and record a memorandum of assignment evidencing that Campus Associates and Plug Power are the successors in interest to the Ground Lease. The cost of recording shall be borne by Plug Power.
10. Title Insurance. It is understood that Plug Power may seek to obtain a leasehold title policy insuring Plug Power’s leasehold interest in the Leased Premises at its sole cost and expense. Campus Associates agrees to provide such affidavits and entity documents as may be customarily and reasonably required by any national title insurance company as selected by Plug Power, for Plug Power to obtain a leasehold policy. Campus Associates further agrees to cooperate with Plug Power to execute any title curative instruments including, but not limited to, non-disturbance agreements, containment letters, releases or any other documents Plug Power deems necessary, in its reasonable judgment, to operate the Leased Premises or to obtain a leasehold title policy that is reasonably acceptable to Plug Power.
11. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of New York without regard to rules concerning conflicts of laws.
12. Counterparts. This Assignment may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. For purposes of this Assignment, a document (or signature page thereto) signed and transmitted by facsimile machine, email or

PDF document, is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date written above.

Campus Associates XI LLC

By: /s/ Joseph R. Nicolla
Name: Joseph R. Nicolla
Title: Authorized Representative

Plug Power, Inc.

By: /s/ Andrew Marsh
Name: Andrew Marsh
Title: BOD Member

Vista Development Group LLC

By: /s/ Stephen Obermayer
Name: Stephen Obermayer
Title: Authorized Representative

I, Andrew Marsh, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Plug Power Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2024

by: /s/ Andrew Marsh
Andrew Marsh
Chief Executive Officer

I, Paul B. Middleton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Plug Power Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2024

by: /s/ Paul B. Middleton
Paul B. Middleton
Chief Financial Officer

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Plug Power Inc. (the "Company") on Form 10-Q for the period ending June 30, 2024 as filed with the Securities and Exchange Commission (the "SEC") on the date hereof (the "Report"), I, Andrew Marsh, Chief Executive Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Andrew Marsh

Andrew Marsh
Chief Executive Officer

August 8, 2024

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Plug Power Inc. (the "Company") on Form 10-Q for the period ending June 30, 2024 as filed with the Securities and Exchange Commission (the "SEC") on the date hereof (the "Report"), I, Paul B. Middleton, Chief Financial Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Paul B. Middleton

Paul B. Middleton
Chief Financial Officer

August 8, 2024
