

**NEXGEN POWER SYSTEMS, INC.**

**RESOLUTION TERMINATING PROJECT  
(3101-18-01A)**

A regular meeting of the Onondaga County Industrial Development Agency (the “Agency”) was convened in public session on June 13, 2024, at 8:30 a.m., local time, at 335 Montgomery Street, 2<sup>nd</sup> Floor, Syracuse, New York.

The meeting was called to order by the (Vice) Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:** Janice Herzog  
Susan Stanczyk  
Fanny Villarreal  
Cydney Johnson

**ABSENT:** Patrick Hogan  
Kevin Ryan  
Elizabeth Dreyfuss

**ALSO PRESENT:** Robert M. Petrovich, Executive Director  
Jeffrey W. Davis, Esq., Agency Counsel  
Amanda M. Fitzgerald, Esq., Agency Counsel

The following resolution was offered by Susan Stanczyk, seconded by Fanny Villarreal, to wit:

**RESOLUTION TERMINATING A PROJECT WITH  
NEXGEN POWER SYSTEMS, INC. AND DIRECTING  
EXECUTION OF TERMINATION DOCUMENTS WITH  
RESPECT THERETO AND TAKING RELATED ACTIONS  
IN CONNECTION THEREWITH.**

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975 of the State of New York, as amended, constituting Section 895 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general

prosperity and economic welfare of the people of the State of New York (the "State"), to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to resolutions adopted February 6, 2018 and March 13, 2018 by the members of the board of the Agency, the Agency agreed to undertake a project (the "Project") on behalf of NexGen Power Systems, Inc. (the "Company") consisting of the following: (A) the sublease of a renovated 66,550 square foot building that will include approximately 7,000 square feet of office space and approximately 21,700 square feet of manufacturing space (the "Facility") having an address at 50 Collamer Crossings Parkway, Town of Dewitt, Onondaga County, New York and encompassing tax map parcel 021.-01-07.3 (the "Land") together with certain machinery and equipment (the "Equipment" and, together with the Land and the Facility, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes and real property taxes for the Company (the "Financial Assistance"); (C) the sub-sublease of the Project Facility to the Company; and (D) assisting the Company in the financing of the Project Facility and the acquisition of the Equipment; and

WHEREAS, the Company was the operator of the Project Facility and, pursuant to a lease agreement effective February 1, 2019 (the "Date of Commencement") between Fort Schuyler Management Company (the "Owner") and the Company (the "FSMC Lease"), the Owner leased the Land to the Company; and

WHEREAS, in connection with the Project and the granting of the Financial Assistance, on or about February 28, 2018, the Agency and the Company entered into the following documents (collectively, the "Basic Documents"): (A) a lease and leaseback agreement (and a memorandum thereof) dated as of February 1, 2018, as amended as of March 13, 2018 by and between the Agency and the Company (as amended, the "Lease and Leaseback Agreement"); (B) a payment in lieu of tax agreement dated as of February 1, 2018, as amended as of March 13, 2018 by and between the Agency and the Company; and (C) various certificates relating to the Project; and

WHEREAS, the Agency was informed that the Company has terminated its leasehold interest in the Land under the FSMC Lease, ceased operations and vacated the Facility and laid off all of the employees of the Company (the "Facility Closure"); and

WHEREAS, a termination of the Company's leasehold interest in the Land under the FSMC Lease is an "Event of Default" under Article X of the Lease and Leaseback Agreement; and

WHEREAS, pursuant to Section 6.7 of the Lease and Leaseback Agreement, the Company agreed to create and maintain at the Facility one hundred twenty-two (122) full time equivalent employees (the "Job Commitment") throughout the Lease Term (as defined in the Lease and

Leaseback Agreement) and that if the Company failed to reach or maintain the Job Commitment (an "Employment Shortfall"), the Company was obligated to repay the Agency a percentage of aggregate tax savings (the "Recapture Amount") which percentage was based on a sliding scale for the first five (5) years following the Date of Commencement (the "Recapture Period"); and

WHEREAS, the failure by the Company to observe and perform the Job Commitment is an "Event of Default" under Article X of the Lease and Leaseback Agreement (the "Job Commitment Default" and, together with the Facility Closure, the "Non-Compliance Event"); and

WHEREAS, the Agency has adopted a Uniform Tax Exemption Policy (the "UTEP"), which includes a Recapture of Agency Benefits section in accordance with Section 874 of the Act; and

WHEREAS, as a result of the Non-Compliance Event, pursuant to the Act, the UTEP and the Lease and Leaseback Agreement, the Agency is required to determine whether to exercise its right to suspend, discontinue, recapture, or terminate all or any portion of the Financial Assistance provided to the Project; and

WHEREAS, the members of the Agency in their sole discretion have determined (the "Determination") to (i) terminate the Project; and (ii) suspend, discontinue, terminate, or recapture, where applicable, all or any portion of the Financial Assistance provided; and

WHEREAS, it has been six (6) years since the Date of Commencement and thus, pursuant to Section 6.7 of the Lease and Leaseback Agreement, the Recapture Period has expired and the Agency will not recapture any of the Financial Assistance; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the action proposed herein constitutes a Type II action and is therefore not subject to further review.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines to terminate the Project, including termination of the Basic Documents, due to an "Event of Default" in accordance with the Lease and Leaseback Agreement (the "Termination"), and hereby determines the Recapture Period has expired and therefore the Agency will not recapture any of the Financial Assistance.

Section 2. The Agency hereby delegates to the Executive Director, in consultation with Agency counsel, to determine the form and substance of the documents to be executed and delivered by the Agency in connection with the Termination (the "Termination Documents").

Section 3. (A) The Chairperson, Vice Chairperson and/or Executive Director (each, an "Authorized Representative") of the Agency are hereby authorized, on behalf of the Agency,

to execute and deliver the Termination Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same.

(B) The Chairperson, or Vice Chairperson and/or Executive Director of the Agency are hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 4. The officers, employees and agents of the Agency, upon advice of Agency counsel are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or to effectuate the Termination, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Termination Documents binding upon the Agency; *provided, however*, that as a condition precedent to the Termination, the Company shall execute and delivery any and all necessary documents required by the Agency to effectuate the Termination; and the Company shall pay the Agency's related fees and costs associated with the Termination, including but not limited to its legal fees.

Section 5. Neither the members nor officers of the Agency, nor any person executing the Termination Documents on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof or the transaction contemplated thereby.

Section 6. This Resolution shall take effect immediately.

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

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Patrick Hogan			X
Janice Herzog	X		
Cydney Johnson	X		
Elizabeth Dreyfuss			X
Susan Stanczyk	X		
Kevin Ryan			X
Fanny Villarreal	X		

The Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 13, 2024, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.

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

I FURTHER CERTIFY that as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed, or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this 14 day of June, 2024.

(SEAL)

Alejo Rodriguez  
Secretary