

**ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**NEXGEN POWER SYSTEMS, INC.**

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**PAYMENT IN LIEU OF TAX AGREEMENT**

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**DATED AS OF FEBRUARY 1, 2018**

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**TAX MAP PARCELS** 021-01-07.3

## **PAYMENT IN LIEU OF TAX AGREEMENT**

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of February 1, 2018 by and between **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation, having its office at 333 W. Washington Street, Syracuse, New York 13202 (the "Agency") and **NEXGEN POWER SYSTEMS, INC.**, a Delaware corporation, having an address of 2010 El Camino Real, Santa Clara Town Centre #1048, Santa Clara, California 95050 (the "Company").

### **WITNESSETH:**

**WHEREAS**, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the People of the State of New York and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

**WHEREAS**, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 564 of the Laws of 1970 of the State of New York (collectively with the Enabling Act, the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined); and

**WHEREAS**, by application to the Agency dated January 3, 2018, the Company requested the Agency's assistance in a project (the "Project") consisting of the following: (A) the sub-lease of a renovated 66,550 square feet 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 parcels \_\_\_\_\_ (the "Land") together with certain machinery and equipment in the Facility (the "Equipment" and, together with the Land and the Facility, the "Project Facility"); (B) the establishment of a Payment In Lieu of Tax Agreement (the "PILOT Agreement") for the Company; and (C) the sub-sublease of the Project Facility to the Company; and

**WHEREAS**, on February 6, 2018, the members of the Agency adopted a resolution (the "Inducement Resolution") whereby the Agency agreed, subject to numerous conditions, to undertake the Project; and

**WHEREAS**, prior to the adoption of the Inducement Resolution, in compliance with the provisions of Section 859-a of the Act, the Assistant Secretary to the Agency (A) caused notice of a public hearing (the "Public Hearing") of the Agency to hear all persons interested in the Project and the PILOT Agreement being contemplated by the Agency with respect to the Project to be mailed to the chief executive officer of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published in *The Post-Standard*, a newspaper of general circulation available to the residents of the Town of Dewitt, (C) conducted the Public Hearing at the Dewitt Town Hall located at 5400 Butternut Drive, Town of Dewitt, Onondaga County, New York and (D) prepared a report of the Public Hearing which fairly summarized the views presented at the Public Hearing and distributed same to the members of the Agency; 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, "SEQRA"), the Agency adopted a resolution (the "Environmental Resolution") on February 6, 2018, by which the Agency determined that the Project will not have a significant impact on the environment, and therefore that an environmental impact statement is not required to be prepared with respect to the Project; and

**WHEREAS**, by resolution adopted by the members of the Agency on February 6, 2018 (the "Closing Resolution"), the Agency determined to grant the PILOT Agreement and to enter into a sub-lease and sub-subleaseback agreement (the "Lease Agreement") and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

**WHEREAS**, pursuant to the terms of the Lease Agreement, (A) the Company agreed (1) to cause the Project to be undertaken and completed, (2) as agent of the Agency, to undertake and complete the Project, and (3) to sub-sublease the Project Facility from the Agency (with an obligation to purchase the Project Facility from the Agency), and (4) to make certain rent payments to the Agency; and (B) the Agency agreed to (1) undertake the Project, (2) appoint the Company as agent of the Agency to undertake and complete the Project, and (3) lease the Facility to the Company (with an obligation to sell the Facility to the Company); and

**WHEREAS**, the Company has entered into a Lease (the "FSMC Lease") by and between Fort Schuyler Management Company, the fee owner of the Facility and landlord ("FSMC") pursuant to which the Company will lease the Facility from FSMC upon the terms and conditions set forth in the FSMC Lease; and

**WHEREAS**, pursuant to the FSMC Lease: (i) FSMC is obligated to pay real property taxes assessed against the Facility prior to the Date of Commencement (as defined in the FSMC Lease) of the FSMC Lease and following termination of the FSMC Lease and (ii) the Company

is obligated to pay real property taxes assessed against the Facility from and after such Date of Commencement and so long as the FSMC Lease is in effect; and

**WHEREAS**, as of the date of this Payment in Lieu of Tax Agreement, FSMC has not paid the real property taxes invoiced January 1, 2018, and attributable to the period July 1, 2017 to June 30, 2018 with respect to school and library taxes and January 1, 2018 to December 31, 2018 with respect to town and county taxes, all of which remain an obligation of FSMC, subject to the terms of the FSMC Lease (collectively, the "Delinquent Taxes"); and

**WHEREAS**, the Lease Agreement is a sub-lease and sub-sublease derivative of the FSMC Lease; and

**WHEREAS**, the Agency and the Company agree that the terms and conditions of this Payment in Lieu of Tax Agreement relating to the Company's obligations to make the Total PILOT Payment and otherwise be obligated for payment of taxes assessed against the Facility shall be in effect only so long as the Lease Agreement and the FSMC Lease are in effect; and

**WHEREAS**, under the current provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes upon any of the property acquired by it or under its jurisdiction or supervision or control; and

**WHEREAS**, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in the amounts set forth below; provided that, so long as this Payment in Lieu of Tax Agreement, the Lease Agreement and the FSMC Lease shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes with respect to the Facility in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to the Project Facility; and

**WHEREAS**, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have, in all respects, been duly authorized by the Agency and the Company;

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree, and bind themselves as follows:

## **ARTICLE 1. REPRESENTATIONS AND WARRANTIES**

**SECTION 1.1 REPRESENTATIONS OF AND WARRANTIES BY THE  
COMPANY.** The Company does hereby represent, warrant and covenant as follows:

(a) Power. The Company is a corporation duly organized and validly existing under the laws of the State of Delaware, duly authorized to do business in the State of New York, and has the power under the laws of the State of New York to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its board of directors has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(b) Authorization. The Company is authorized and has the power under its articles of incorporation, by-laws (collectively, the "Organizational Documents") and the laws of the State of New York to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its board of directors, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(c) Conflicts. To the actual knowledge of the Company (referred to herein as the "Company's Knowledge"), the Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not, to the Company's Knowledge, conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Organizational Documents, or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which the Company or any of its property is bound, and, to the Company's Knowledge, neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

SECTION 1.2 REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(a) Power. The Agency is a public benefit corporation of the State of New York, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(b) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all of the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(c) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

## **ARTICLE 2.**

### **COVENANTS AND AGREEMENTS**

#### **SECTION 2.1 TAX-EXEMPT STATUS OF THE FACILITY.**

(a) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a sub-leasehold interest in the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own a sub-leasehold interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (the aforementioned "Affected Taxing Jurisdictions") as exempt upon the assessment rolls of the respective Affected Taxing Jurisdictions prepared subsequent to the sub-lease by the Agency of the Project Facility created by the Lease and the filing of the Real Property Tax Exemption Forms. The Agency shall take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Affected Taxing Jurisdictions prepared subsequent to such sub-lease by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Affected Taxing Jurisdiction responsible for assessing properties on behalf of each such Affected Taxing Jurisdiction (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall sub-lease the Project Facility, the Company shall, at its option, take such further action as may be necessary to



maintain such exempt assessment with respect to each Affected Taxing Jurisdiction. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Affected Taxing Jurisdiction until the first tax year of such Affected Taxing Jurisdiction following the tax status date of such Affected Taxing Jurisdiction occurring subsequent to the date upon which the Agency becomes the sub-lessee of record of the Facility and the Real Property Tax Exemption Forms are filed with the Assessors. So long as the FSMC Lease and the Lease Agreement are in effect, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year (expressly excepting the Delinquent Taxes) and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Affected Taxing Jurisdictions. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Facility.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the owner of the Facility and/or the Company, as more particularly controlled by the FSMC Lease, will be required to pay all special assessments and special as valorem levies lawfully levied and/or assessed against the Facility.

## SECTION 2.2 PAYMENTS IN LIEU OF TAXES.

(a) Agreement to Make Payments. The Agency and the Company agree that the terms and conditions of this Payment in Lieu of Tax Agreement relating to the Company's obligations to make the Total PILOT Payment and otherwise be obligated for payment of taxes assessed against the Facility shall be in effect only so long as the Lease Agreement and the FSMC Lease are in effect. The Company shall make annual payments in lieu of property taxes, in the amounts hereinafter provided, to the Agency pursuant to the provisions hereof (the "Total PILOT Payment"), beginning with the tax bill for school and library taxes for the year July 1, 2018 to June 30, 2019 and the town and county taxes for the tax year beginning January 1, 2019. The Total PILOT Payment due hereunder shall be paid by the Company to the Agency for distribution to the appropriate Affected Taxing Jurisdictions entitled to same pursuant to the provisions hereof (the "ATJ Distribution"). The first year of this Agreement shall relate to the 7/1/2018-6/30/2019 School and Library Tax and the 2019 Town and County tax years.

(b) Total Amount of Payments in Lieu of Taxes. Upon the condition precedent that the Lease Agreement and FSMC Lease are in effect, the Total PILOT Payment to be paid by the Company to the Agency annually pursuant to the terms of this Payment in Lieu of Tax Agreement has been agreed upon and fixed by the parties and is set forth in Subsection C of this Section 2.2 below.

(c) ATJ Distribution. The amount to be paid by the Company to the Agency (so long as the Lease Agreement and the FSMC Lease are in effect) in each tax year during the term of this Payment in Lieu of Tax Agreement on behalf of all of the Affected Taxing Jurisdictions as an aggregate payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be fixed and shall be in the amounts as

shown on the following table. Upon receipt by the Agency, the Agency shall then distribute the payments to the Affected Taxing Jurisdictions.

PILOT YEAR	Exemption %	Total PILOT	Full Tax Payment w/o PILOT	Net Exemption
1	100%	\$ 70,885.94	\$ 358,010	\$ 287,124
2	100%	\$ 72,303.66	\$ 365,170	\$ 292,866
3	100%	\$ 73,749.73	\$ 372,473	\$ 298,724
4	100%	\$ 75,224.72	\$ 379,923	\$ 304,698
5	100%	\$ 76,729.22	\$ 387,521	\$ 310,792
6	95%	\$ 94,114.20	\$ 395,272	\$ 301,158
7	90%	\$112,163.89	\$ 403,177	\$ 291,013
8	80%	\$147,388.67	\$ 411,241	\$ 263,852
9	60%	\$217,618.72	\$ 419,466	\$ 201,847
10	50%	\$256,285.05	\$ 427,855	\$ 171,570
11	40%	\$296,410.99	\$ 436,412	\$ 140,001
12	30%	\$338,039.45	\$ 445,140	\$ 107,101
13	20%	\$381,214.48	\$ 454,043	\$ 72,828
14	10%	\$425,981.31	\$ 463,124	\$ 37,143
15	5%	\$453,443.62	\$ 472,386	\$ 18,943
<b>TOTAL</b>		<b>\$ 3,091,554</b>	<b>\$ 6,191,213</b>	<b>\$ 3,099,659</b>

(d) Valuation of Additional Facilities. The value of each Additional Facility, as hereinafter defined, for purposes of determining payments in lieu of taxes due under Section 2.2(G) hereof shall be determined by the Assessors from time to time. The parties hereto agree that the Assessors shall (a) appraise each Additional Facility in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purpose (hereinafter referred to as the "Additional Assessed Value") upon each Additional Facility, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy for real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assess Value and of any change in such Additional Assessed Value.

(e) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (each such structural addition, additional building or other structure being hereinafter referred to as an "Additional Facility"), and so long as the FSMC Lease is then in effect, the Company agrees to make additional annual payments in lieu of property taxes for such Additional Facilities (such additional payments will only be generated for improvements made after completion of the leasing, renovation and equipping of the Facility and are hereinafter collectively referred to as "Additional Payments") to the Agency with respect to each such Additional Facility, such



Additional Payments to be computed separately for each Affected Taxing Jurisdiction and tax parcel as follows:

(i) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") upon each Additional Facility which would be payable to each Affected Taxing Jurisdiction if such Additional Facility was owned by the owner of the Land and leased to the Company and not the Agency as follows: (a) multiply the Additional Assessed Value of each such Additional Facility determined pursuant to subsection (D) of this Section 2.2 by (b) the tax rate or rates of such Affected Taxing Jurisdiction that would be applicable to each such Additional Facility if such Additional Facility was owned by the owner of the Land and leased to the Company and not the Agency and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Affected Taxing Jurisdiction if such Additional Facilities were owned by the Company or the owner of the Land and leased to the Company and not leased to the Agency.

(ii) If the Company and the Agency desire, the Agency and the Company may enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facility as provided in Section 5.5, in which case the provisions of such separate written agreement shall control.

(f) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Affected Taxing Jurisdiction a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Affected Taxing Jurisdiction responsible for preparing the tax rolls for said Affected Taxing Jurisdiction (each, a "Tax Billing Officer").

(g) Time of Payments. For so long as the FSMC Lease is in effect, the Company agrees to pay the amounts due hereunder to the Agency for the benefit of the particular Affected Taxing Jurisdiction to the appropriate Receiver of Taxes within the period that each Affected Taxing Jurisdiction allows payment of taxes levied in such fiscal year without penalty. The Company shall be entitled to receive receipts for such payments.

(h) Method of Payment. All payments by the Company hereunder shall be paid to the Agency in lawful money of the United States of America. The Agency shall in turn distribute the amounts so paid to the various Affected Taxing Jurisdictions entitled to same or to the Company for refund as the case may be.

(i) Challenge of Assessments.

(i) The Company shall not challenge the Assessed Value of the Project Facility so long as this Payment in Lieu of Tax Agreement is in effect. However, the Company and the owner of the Facility shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company or the owner of the Land is obligated

to make a payment pursuant to this Agreement, as if and to the same extent as if the Agency were not a lessee of the Facility.

(ii) With regards to the Project Facility and any Additional Facility, the Company and the owner of the Land shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not lease the Additional Facility, with respect to any proposed Additional Assessed Value and likewise shall be entitled to protest before and be heard by the appropriate Assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any Additional Assessed Value or the validity or amount of any tax equivalent provided for in this Agreement.

### SECTION 2.3 CREDIT FOR TAXES PAID.

(a) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.2 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes (other than real property taxes) and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to the Agency or to any Affected Taxing Jurisdiction any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to the Agency or to any Affected Taxing Jurisdiction hereunder shall be reduced by the amounts which the Company shall have so paid to the Agency or the Affected Taxing Jurisdiction in such fiscal tax year.

(b) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the Affected Taxing Jurisdiction and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.3, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.2(I) hereof. In the event that the governing body of the appropriate Affected Taxing Jurisdiction desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.3 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of

property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.3) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

#### SECTION 2.4 LATE PAYMENTS.

(a) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(b) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due (subject to any applicable grace period) and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Affected Taxing Jurisdiction until such payment in default shall have been made in full, and the Company shall pay the same to the Affected Taxing Jurisdiction together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 2.5 RECAPTURE. In the event that (a) the FSMC Lease and the Lease Agreement are terminated, or (b) the number of Full Time Permanent Employee Count (as defined below) at the Project Facility is reduced below 75% of the number employed at the time of application or below 75% of the employment projections provided by the Company to the Agency, and no substantial future economic benefit is likely to accrue to the community, (each, a "Recapture Event"), the Company shall pay to the Agency, based on the formula set forth below, a portion of the Aggregate Tax Savings which the Company realized as a result of the Agency undertaking the Project. For purposes of this Section, "Aggregate Tax Savings" shall mean the amount by which the real property taxes which the Company would have paid if the Project Facility were owned by the Company and not deemed owned by or under the jurisdiction or control or supervision of the Agency exceeds the payments in lieu of taxes actually paid by the Company.

Notwithstanding anything to the contrary herein, the term "Recapture Event" shall not include reductions in employment that are the result of condemnation, damage or destruction of the Project Facility that the Company elects not to repair and replace in accordance with the Lease Agreement.

Percentage of Aggregate

<u>Date of Recapture Event</u>	<u>Tax Savings Recaptured</u>
Year 1	75%
Year 2	60%
Year 3	40%
Year 4	20%
Year 5	0%

### **ARTICLE 3. LIMITED OBLIGATION**

#### **SECTION 3.1 NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY.**

(a) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(b) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Onondaga County, New York, and neither the State of New York nor Onondaga County, New York shall be liable thereon and, further, such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the permitted lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(c) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

### SECTION 3.2 ASSIGNMENT.

(a) The Company may not assign its right, title, interest and obligations in, to and under this Payment in Lieu of Tax Agreement without the prior written consent of the Agency, which consent will not be unreasonably withheld, conditioned or delayed, and any such assignment without such prior written consent shall be deemed null and void; provided, however, that the foregoing restriction shall not prohibit: (i) a collateral assignment (a "Collateral Assignment") by the Company of its right, title and interest in and to this Payment in Lieu of Tax Agreement to any Lender of the Company; (ii) an assignment of any right, title and interest in, to and under this Payment in Lieu of Tax Agreement to a Qualified Transferee (as defined below); (iii) the commencement of any Enforcement Action by a Lender, (iv) a sub-lease of the Project Facility in the ordinary course of business consistent with the Lease Agreement or (v) an assignment of sublease of the Project Facility to: (1) an Affiliate of the Company, or (2) any entity into with or with whom the Company merges or consolidates, or (3) any entity to whom all of the assets of the Company or all of the stock of the Company is sold.

(b) As used in this Section 3.2:

(i) "Affiliate" shall mean a person or entity that directly or indirectly Controls, is Controlled by, or is under common Control with, another person or entity.

(ii) "Control" and/or any derivative thereof shall mean the power, directly or indirectly, to either: (1) vote fifty percent (50%) or more of the securities of an entity having ordinary voting power for the election of directors and/or managers of such entity; or (2) direct or cause the direction of the management and policies of such entity whether by contract or otherwise.

(iii) "Enforcement Action" shall mean any (1) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Project or the Company, including, without limitation, the taking of possession or control of the Project; or (2) acceleration of, or demand or action taken in order to collect all or any indebtedness secured by the Project; or (3) exercise of any right or remedy available to the Lender under the related loan documents, at law, in equity or otherwise, with respect to the Project and/or the Company; or (4) any action or proceeding or otherwise exercise of a Lender's rights and remedies commenced by such Lender, in law, in equity, or otherwise, in order to

realize upon any direct and indirect equity interests in the Company that have been pledged as security for a loan in connection with the Project.

(iv) "Lender" shall mean any construction lender, liquidity provider, mezzanine lender or permanent lender for all or any portion of the Project (including, without limitation, its Affiliates, successors and permitted assigns under the related loan).

(v) "Qualified Transferee" shall mean (1) a Lender for the Project, or any Affiliate of a Lender, and any successor thereto, in whole or in part, whether by reason of merger, reorganization, acquisition, dissolution or otherwise, or the constituent entities from time to time thereof; (2) any person, organization or institution that satisfies the Eligibility Requirements as defined by the Agency's uniform tax exempt policy; or (3) any person, organization or institution that satisfied the Eligibility Requirements.

#### **ARTICLE 4. EVENTS OF DEFAULT**

SECTION 4.1 EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(a) Failure of the Company to pay any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(b) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(c) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such correctness cannot

reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

#### SECTION 4.2 REMEDIES ON DEFAULT.

(a) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Affected Taxing Jurisdiction, then with respect to such Event of Default such Affected Taxing Jurisdiction) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(b) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the leasehold interest in the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(c) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(d) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.3 PAYMENT OF ATTORNEYS' FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Affected Taxing Jurisdiction should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Affected Taxing Jurisdiction, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other reasonable expenses, costs and disbursements so incurred, whether or not an action is commenced.

#### SECTION 4.4 REMEDIES; WAIVER.



(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Affected Taxing Jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## **ARTICLE 5. MISCELLANEOUS**

SECTION 5.1        TERM. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency (the "Effective Date"). Unless otherwise provided by amendment hereof and subject to the provisions of Section 5.4 below, this Payment in Lieu of Tax Agreement shall continue to remain in effect as to any particular tax parcel incorporated in the Facility until the earlier to occur of (1) December 31, 2033, or (2) the date on which the Lease Agreement is terminated.

SECTION 5.2        FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.3        COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.4        AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.5        RELEASE. The parties to this Payment in Lieu of Tax Agreement acknowledge and agree that portions of the Project Facility may be released from the terms and conditions of this Payment in Lieu of Tax Agreement upon the request of the Company, at such time that the real property tax benefit provided herein has expired.

Additionally, at the request of the Company, the Agency and the Company shall enter into a separate payment in lieu of tax agreement for a tax parcel and thereupon such tax parcel shall be released from the terms and conditions of this Payment in Lieu of Tax Agreement.

#### SECTION 5.6           NOTICES.

(a)   General. All notices, certificates or other communications hereunder shall be in writing and shall be sent by recognized overnight courier service and shall be sufficiently given and shall be deemed given: (1) on the next business day following the date the notice was sent to the applicable address stated below or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempt to effect such delivery.

(b)   Notices Given by Taxing Entities. Notwithstanding the foregoing, notices given by an Affected Taxing Jurisdiction under Article II hereof shall be sufficiently given and shall be deemed given when by the Affected Taxing Jurisdiction in the same manner in which similar notices are given to owners of taxable properties by such Affected Taxing Jurisdiction.

(c)   Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

##### IF TO THE AGENCY:

Onondaga County Industrial Development Agency  
333 West Washington Street, Room 130  
Syracuse, New York 13202  
Attention: Julie Cerio, Executive Director

##### WITH A COPY TO:

Barclay Damon, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Anthony P. Rivizzigno, Esq.

##### IF TO THE COMPANY:

NexGen Power Systems, Inc.  
2010 El Camino Real  
Santa Clara Town Centre #1048  
Santa Clara, California 95050  
Attention: Narayanan Karu, Chief Financial Officer

WITH A COPY TO:

Arnold & Porter  
250 West 55<sup>th</sup> Street,  
New York, NY 10019-9710  
Attention: Michael Penney, Esq.

(d) Copies. A copy of any notice given hereunder by the Company which affects in any way an Affected Taxing Jurisdiction, shall also be given to the chief executive officer of such Affected Taxing Jurisdiction.

(e) Change of Address. The Agency, the Company or any Affected Taxing Jurisdiction may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.7 BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency, the Company and the respective Affected Taxing Jurisdictions and their respective successors or assigns.

SECTION 5.8 SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.


SECTION 5.9 COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.10 APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

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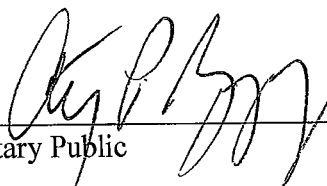
**IN WITNESS WHEREOF**, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

**ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Patrick Hogan  
Title: Chairman

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

On the 28 day of FEBRUARY in the year 2018, before me, the undersigned, personally appeared **PATRICK HOGAN**, 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 acknowledges to be that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**ANTHONY P. RIVIZZIGNO**  
Notary Public, State of New York  
No. 02RI6060653  
Qualified in Onondaga County  
Commission Expires June 25, 2019

NEXGEN POWER SYSTEMS, INC.

By: 

Name: Dinesh Ramanathan

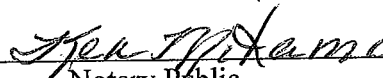
Title: CEO

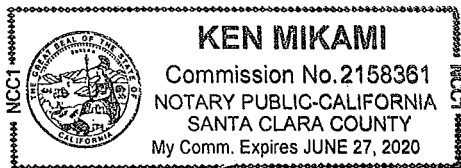
STATE OF CALIFORNIA )

) ss.:

COUNTY OF SANTA CLARA )

On the 27 day of FEB. in the year 2018, before me, the undersigned, personally appeared DINESH RAMANATHAN 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 the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public



Y) PILOTS Estimate Table Worksheet NexGen Power Systems

Current Market Value	\$	1,980,000
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Dollar Value of New Construction and Renovation Costs	\$	3,200,000
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Estimated New Market Value of Property Subject to IDA	\$	8,020,000
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Estimated Market Value after project is completed	\$	10,000,000
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Taxes that would have been collected if the project did not occur	\$	1,225,860
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Scheduled PILOT payments	\$	3,091,554
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PILOT YEAR	Exemption %	County PILOT Amount	Local PILOT Amount	School PILOT Amount	Total PILOT	Full Tax Payment w/o PILOT	Net Exemption
1	100%	\$ 10,658	\$ 9,775	\$ 50,453	\$ 70,885.94	\$ 358,010	\$ 287,124
2	100%	\$ 10,871	\$ 9,970	\$ 51,462	\$ 72,303.66	\$ 365,170	\$ 292,866
3	100%	\$ 11,089	\$ 10,170	\$ 52,491	\$ 73,749.73	\$ 372,473	\$ 298,724
4	100%	\$ 11,310	\$ 10,373	\$ 53,541	\$ 75,224.72	\$ 379,923	\$ 304,698
5	100%	\$ 11,537	\$ 10,561	\$ 54,612	\$ 76,729.22	\$ 387,521	\$ 310,792
6	95%	\$ 14,151	\$ 12,978	\$ 66,986	\$ 94,114.20	\$ 395,272	\$ 301,158
7	90%	\$ 16,864	\$ 15,467	\$ 79,833	\$ 112,163.89	\$ 403,177	\$ 291,013
8	80%	\$ 22,161	\$ 20,324	\$ 104,904	\$ 147,388.67	\$ 411,241	\$ 263,852
9	60%	\$ 32,720	\$ 30,009	\$ 154,890	\$ 217,618.72	\$ 419,466	\$ 201,847
10	50%	\$ 38,534	\$ 35,341	\$ 182,411	\$ 256,285.05	\$ 427,855	\$ 171,570
11	40%	\$ 44,567	\$ 40,874	\$ 210,970	\$ 296,410.99	\$ 436,412	\$ 140,001
12	30%	\$ 50,826	\$ 46,614	\$ 240,599	\$ 338,039.45	\$ 445,140	\$ 107,101
13	20%	\$ 57,317	\$ 52,568	\$ 271,329	\$ 381,214.48	\$ 454,043	\$ 72,828
14	10%	\$ 64,048	\$ 58,741	\$ 303,192	\$ 425,981.31	\$ 463,124	\$ 37,143
15	5%	\$ 68,177	\$ 62,628	\$ 322,738	\$ 453,443.62	\$ 472,386	\$ 18,943
TOTAL		\$ 464,830	\$ 426,312	\$ 2,200,412	\$ 3,091,554	\$ 6,191,213	\$ 3,099,659

	Year						Total
	0	2019	2020	2021	2022	2023	
Jobs							0
Current/Actuals	0						
Creation Goals		27	31	11	54	108	231
Total Employment Goals	0	27	58	69	123	231	231