

NEXGEN POWER SYSTEMS, INC.

**INDUCEMENT RESOLUTION
(3101-18-01A)**

At a regular meeting of the Onondaga County Industrial Development Agency convened in public sessions on February 6, 2018 at 8:15 a.m. at 333 West Washington Street, Syracuse, New York, the following members were:

PRESENT:

Patrick Hogan
Steve Morgan
Susan Stanczyk
Kevin Ryan
Fanny Villarreal

ABSENT:

Victor Ianno
Janice Herzog

ALSO PRESENT:

Julie Cerio, Executive Director
Anthony P. Rivizzigno, Esq., Agency Counsel

Upon motion duly made and seconded, the following resolution was duly adopted by the Agency with its members voting as follows:

Aye

Nay

Patrick Hogan
Steve Morgan
Susan Stanczyk
Kevin Ryan
Fanny Villarreal

RESOLUTION TAKING PRELIMINARY OFFICIAL ACTION TOWARD ACQUIRING AND INSTALLING A CERTAIN PROJECT FOR NEXGEN POWER SYSTEMS, INC.

WHEREAS, the Onondaga County Industrial Development Agency (the “Agency”) is authorized and empowered by 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”), Chapter 564 of the 1970 Laws of New York, and Chapter 402 of the 1987 Laws 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 industrial manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities and continuing care retirement communities, among others, for the purpose of promoting, attracting, encouraging and developing recreation, and 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 and to improve their recreation opportunities, 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, improve, maintain, equip or furnish one or more “projects” (as defined in the Act); to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of said projects; and to issue bonds and provide for the rights of the holders thereof; and

WHEREAS, NexGen Power Systems, Inc. (the “Company”) has presented an application (the “Application”) to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting the Agency consider undertaking a project (the “Project”) consisting of the following: (A) renovation of 66,550 square feet that will include approximately 7,000 square feet of office space and approximately 21,700 square feet of manufacturing space and purchase of machinery and/or equipment (the “Equipment”) located on 14.04 acres at 50 Collamer Crossings Parkway in the Town of Dewitt, County of Onondaga (the “Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Facility and the Equipment to the Company; and

WHEREAS, the Agency has given due consideration to the Application and to representations made by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Onondaga County, New York; and (B) the completion of the Project will not result in the removal of a facility or a plant of the Project occupant from one part of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Project occupant located within the State of New York; and

WHEREAS, in compliance with the provisions of Section 859-A of the Act, 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 financial assistance 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 a Public Hearing at the Town of Dewitt Town Hall, located at 5400 Butternut Drive in the 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 “SEQR 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.

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

Section 1. Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

- (A) The Project constitutes a “project” within the meaning of the Act;
- (B) The completion of the Project will not result in the removal of a facility or plant of the Project occupant from one part of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Project occupant located within the State of New York;
- (C) The granting of the Financial Assistance by the Agency with respect to the Project will promote the job opportunities, health, general prosperity and economic welfare of the citizens of Onondaga County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;
- (D) It is desirable and in the public interest for the Agency to undertake the Project; and
- (E) The Project does not constitute a project where the facilities or property comprising the Project will be primarily used in making retail sales of goods or services to customers who personally visit such facilities and constitute more than one-third (1/3) of the total Project cost.

Section 2. The Agency will (A) acquire and install the Equipment in the Facility; and (B) sell the Equipment to the Company pursuant to an installment sale agreement (the "Project Agreement") between the Agency and the Company whereby the Company will be obligated, among other things, to pay all costs incurred by the Agency with respect to the Project and/or the Equipment, including all costs of operations and maintenance, all taxes and other governmental charges, and reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Equipment; and (C) provide the Financial Assistance with respect to the Project, in accordance with the Agency's uniform tax exemption policy, including exemption from sales taxes relating to the acquisition and installation of the Equipment.

Section 3. The Company is appointed the true and lawful agent of the Agency to acquire and install the Equipment and to make, execute, acknowledge and deliver any contracts, orders, receipts, writings, instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for acquiring and installing the Equipment, all with the same powers and same validity as if the Agency were acting in its own behalf.

Section 4. The undertaking and completion of the Project by the Agency, and the granting of the Financial Assistance with respect to the Project as contemplated by Section 2 of this Resolution, shall be subject to: the Financial Assistance granted by the Agency with respect to the Project must be consistent with the Agency's uniform tax exemption policy, or, if any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency's uniform tax exemption policy, the Agency shall follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance.

Section 5. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to \$500,000.00, which result in New York State and local sales and use tax exemption benefits ("sale and use tax exemption benefits") not to exceed \$40,000.00. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for

the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sale and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sale and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 6. All actions taken by the Assistant Secretary of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 7. The Chairman, Vice Chairman, Executive Director and Assistant Secretary of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things and perform such further acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 8. This resolution shall take effect immediately.

