

Date: July 19, 2022

At a meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), held at 1 Independence Hill, 2<sup>nd</sup> Floor, Farmingville, New York 11738 on the 19th day of July, 2022, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman  
Martin Callahan, Treasurer  
Gary Pollakusky, Asst. Secretary  
Lenore Paprocky, Member

Recused:

Excused: Felix J. Grucci, Jr., Vice Chair  
Ann-Marie Scheidt, Secretary  
Frank C. Trotta, Asst. Treasurer

Also Present: Lisa M. G. Mulligan, Chief Executive Officer  
Lori LaPonte, Chief Financial Officer  
Jocelyn Linse, Executive Assistant  
Amy Illardo, Administrative Assistant  
Annette Eaderesto, Esq., Counsel to the Agency  
William F. Weir, Esq., Transaction Counsel  
Howard R. Gross, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and title to a certain industrial development facility more particularly described below (FourGen-H LLC 2022 Facility) and the leasing of the facility to FourGen-H LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Braun  
Callahan  
Pollakusky  
Paprocky

Voting Nay

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE  
APPOINTMENT OF FOURGEN-H LLC, A DELAWARE  
LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF  
AND/OR THE PRINCIPALS OF FOURGEN-H LLC AND/OR  
AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF  
ANY OF THE FOREGOING AS AGENT OF THE AGENCY  
FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND  
EQUIPPING THE FACILITY, APPROVING THE  
ACQUISITION, CONSTRUCTION AND EQUIPPING OF  
SUCH INDUSTRIAL DEVELOPMENT FACILITY AND  
MAKING CERTAIN FINDINGS AND DETERMINATIONS  
WITH RESPECT TO THE FACILITY AND APPROVING THE  
FORM, SUBSTANCE AND EXECUTION OF RELATED  
DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time (collectively, the "**Act**"), the Town of Brookhaven Industrial Development Agency (the "**Agency**"), was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, FourGen-H LLC, a Delaware limited liability company, on behalf of itself and/or the principals of FourGen-H LLC, and the equity investors in and any tax credit investors in FourGen-H LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Company**"), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a leasehold interest in an approximately 2,000 square foot area and certain land encumbered by utility access easements all within an approximately 8.39-acre parcel of land located at 586 Union Avenue, Holtsville, New York 11742 (more particularly described as Suffolk County Tax Map No. 0200-765.00-05.00-002.000) (the "**Land**"), the construction thereon of an approximately 0.92 MW fuel cell electric power generation project (the "**Improvements**"), and the acquisition and installation of certain equipment and personal property therein including, but not limited to fuel cell systems (the "**Equipment**"; and together with the Land and the Improvements, the "**Facility**"), which Facility will be sub-subleased, subleased and leased by the Agency to the Company and used by the Company to construct a fuel cell electric power generation project in order to sell community net metered power to the residents and small commercial customers (collectively, the "**Project**"); and

WHEREAS, Northville Industries Corp., a business corporation, on behalf of itself and/or the principals of Northville Industries Corp., and the equity investors in and any tax credit investors in Northville Industries Corp. and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Owner**") will own the Land and will ground lease the Land to the Company; and

WHEREAS, the Agency will acquire a subleasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of July 1, 2022 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sub-lease the Land, sublease the Improvements and lease the Equipment to the Company pursuant to a certain Lease and Project Agreement, dated as of July 1, 2022 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed \$345,000, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); and

WHEREAS, in connection with the abatement of real property taxes as set forth in the PILOT Schedule on Exhibit C hereof, the current pro-rata allocation of PILOT payments to each affected tax jurisdiction in accordance with Section 858(15) of the Act and the estimated difference between the real property taxes on the Facility and the PILOT payments set forth on the PILOT Schedule on Exhibit C hereof are more fully described in the Cost Benefit Analysis (“**CBA**”) developed by the Agency in accordance with the provisions of Section 859-a(5)(b) of the Act, a copy of which CBA is attached hereto as Exhibit D; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, a public hearing (the “**Hearing**”) was held on July 19, 2022 and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed Facility is either an inducement to the Company to maintain and expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (collectively, the "Questionnaire") with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the sub-subleasing, subleasing and leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition, construction, equipping and operation of the Facility is a Type 1 action under SEQR and therefore, does not require further environmental review.

Section 2. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The acquisition, construction and equipping of the Facility and the leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency subleases the Land and leases the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency sub-subleases, subleases and leases the Facility to the Company, the Agency and the Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company.

Section 3. The Agency has assessed all material information included in connection with the Company's application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) sublease the Land and lease the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease, sublease and sub-sublease the Facility to the Company pursuant to the Lease Agreement, and (iv) execute, deliver and perform the Lease Agreement.

Section 5. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 6. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition, construction and equipping of the Facility in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed \$345,000, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), all consistent with the policies of the Agency. In connection with the abatement of real property taxes as set forth in the PILOT Schedule on Exhibit C hereof, the current pro-rata allocation of PILOT payments to each affected tax jurisdiction in accordance with Section 858(15) of the Act and the estimated difference between the real property taxes on the Facility and the PILOT payments set forth on the PILOT Schedule on Exhibit C hereof are more fully described in the CBA developed by the Agency in accordance with the provisions of Section 859-a(5)(b) of the Act, a copy of which CBA is attached hereto as Exhibit D.

Section 7. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such

other parties as the Company may choose in order to acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$345,000 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 8. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease Agreement. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 9. The form and substance of the Company Lease and the Lease Agreement (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 10.

(a) The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease and the Lease Agreement, each in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 11. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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 Agency Documents binding upon the Agency.

Section 12. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 13. This resolution shall take effect immediately.

ADOPTED: July 19, 2022

STATE OF NEW YORK     )  
  : SS.:  
COUNTY OF SUFFOLK    )

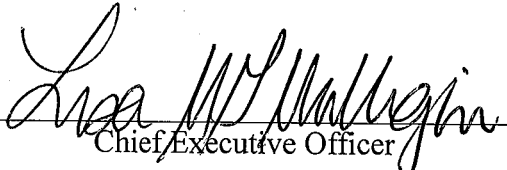
I, the undersigned Chief Executive Officer of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 19th day of July, 2022, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 19th day of July, 2022.

By:   
Chief Executive Officer



## EXHIBIT A

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### NOTICE OF PUBLIC HEARING

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NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 19th day of July, 2022, at 10:00 a.m. local time, at the Town of Brookhaven Division of Economic Development, 2<sup>nd</sup> Floor, One Independence Hill, Farmingville, New York 11738, in connection with the following matters:

FourGen-H LLC, a Delaware limited liability company, on behalf of itself and/or the principals of FourGen-H LLC, and the equity investors in and any tax credit investors in FourGen-H LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a leasehold interest in an approximately 2,000 square foot area and certain land encumbered by utility access easements all within an approximately 8.39-acre parcel of land located at 586 Union Avenue, Holtsville, New York 11742 (more particularly described as Suffolk County Tax Map No. 0200-765.00-05.00-002.000) (the “**Land**”), the construction thereon of an approximately 0.92 MW fuel cell electric power generation project (the “**Improvements**”), and the acquisition and installation of certain equipment and personal property therein including, but not limited to fuel cell systems (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be sub-subleased, subleased and leased by the Agency to the Company and used by the Company to construct a fuel cell electric power generation project in order to sell community net metered power to the residents and small commercial customers (collectively, the “**Project**”). The Facility will be initially leased, owned, operated and/or managed by the Company.

Northville Industries Corp., a business corporation, on behalf of itself and/or the principals of Northville Industries Corp., and the equity investors in and any tax credit investors in Northville Industries Corp. and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Owner**”) will own the Land, and will ground lease the Land to the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-sublease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. Prior to the hearing, all persons will have the opportunity to review on the Agency’s website

(<https://brookhavenida.org/>), the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Due to COVID-19 protocols, all persons attending the public hearing will be required to wear face masks and maintain proper social distancing.

Dated: July 9, 2022

TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY

By: Lisa M. G. Mulligan  
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON  
JULY 19, 2022 AT 10:00 A.M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY  
(FOURGEN-H LLC 2022 FACILITY)

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Section 1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. Lisa MG Mulligan then appointed herself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

FourGen-H LLC, a Delaware limited liability company, on behalf of itself and/or the principals of FourGen-H LLC, and the equity investors in and any tax credit investors in FourGen-H LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a leasehold interest in an approximately 2,000 square foot area and certain land encumbered by utility access easements all within an approximately 8.39-acre parcel of land located at 586 Union Avenue, Holtsville, New York 11742 (more particularly described as Suffolk County Tax Map No. 0200-765.00-05.00-002.000) (the “**Land**”), the construction thereon of an approximately 0.92 MW fuel cell electric power generation project (the “**Improvements**”), and the acquisition and installation of certain equipment and personal property therein including, but not limited to fuel cell systems (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be sub-subleased, subleased and leased by the Agency to the Company and used by the Company to construct a fuel cell electric power generation project in order to sell community net metered power to the residents and small commercial customers (collectively, the “**Project**”). The Facility will be initially leased, owned, operated and/or managed by the Company.

Northville Industries Corp., a business corporation, on behalf of itself and/or the principals of Northville Industries Corp., and the equity investors in and any tax credit investors in Northville Industries Corp. and/or an entity formed or to be

formed on behalf of any of the foregoing (collectively, the "Owner") will own the Land, and will ground lease the Land to the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-lease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

N/A

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 10:30 a.m.



EXHIBIT C

Proposed PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Sachem School District, Suffolk County and Appropriate Special Districts

Property Address: 586 Union Ave, Holtsville, New York 11742

Tax Map Nos. p/o 0200-765.00-05.00-002.000\*

School District: Sachem School District

\*This PILOT Schedule will apply only to an approximately 2,000 square foot area located within the address and tax map number indicated above.

<u>Year</u>	<u>PILOT Amount</u>
1	\$ 29,053
2	\$ 29,053
3	\$ 29,053
4	\$ 29,053
5	\$ 29,053
6	\$ 29,634
7	\$ 30,226
8	\$ 30,831
9	\$ 31,448
10	\$ 32,076
11	\$ 32,718
12	\$ 33,372
13	\$ 34,040
14	\$ 34,721
15	\$ 35,415
16	\$ 36,123
17	\$ 36,846
18	\$ 37,583
19	\$ 38,334
20	\$ 39,101
21	\$ 39,883
22	\$ 40,681
23	\$ 41,494
24	\$ 42,324
25	\$ 43,171

EXHIBIT D

Cost Benefit Analysis