

ORIGINAL
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RESOLUTION NO.: R-2023-002

*Authorizing the City Manager to execute a Lease Agreement between the City of Columbia and
ImaGen, Inc. for the lease of 335 Richland Street,
Richland County TMS# 09006-07-02 for the development of a Columbia Hydrogen Fueling Station and
Center for Transportation and the Environment*

BE IT RESOLVED by the Mayor and City Council this 17th day of January, 2023, that the City Manager is hereby authorized to execute the attached Lease Agreement and any documents necessary and approved by the City Attorney, between the City of Columbia and ImaGEN, Inc. for the lease of 335 Richland Street, Richland County TMS #09006-07-02 for the development of a Columbia Hydrogen Fueling Station and Center for Transportation and the Environment.

Requested by:

Ryan Coleman, Director of
Economic Development

Approved by:

Ceresa B. Wilson
City Manager

Approved as to form:

[Signature]
City Attorney

Introduced: 1/17/2023

Final Reading: 1/17/2023

[Signature]
Mayor

ATTEST:

Tika D. Hammond
City Clerk

Statement of Work

ImaGEN will provide and install a state-of-the-art Tru-H₂™ hydrogen generation system and will pipe it to existing compressor and storage tubes in anticipation of a fully functional hydrogen demonstration and active refueling station located at CTE Richland Street, Columbia, SC 29208 (the "Site"). The station will be leased to and operated by ImaGEN for the primary intent of promoting hydrogen technology as a cleaner alternative to fossil fuel-based vehicles and other commercial/industrial equipment. The Site will also demonstrate that the City, in conjunction with the State of South Carolina, is prepared to showcase forward-thinking alternative energy programs in support of the federal government's clean fuel initiative.

Deliverables

ImaGEN will perform the following tasks:

- Develop design plans that will direct the overall content and approach for the project including the system integration with existing equipment (November 2022);
- Provide design input to the ImaGEN project manager to effect proper permitting and code enforcement (December 2022) UPDATE;
- Provide the City unfettered access to all design elements of the Site for final approval (ongoing);
- Develop design prototypes and templates which can be provided to the Mayor and City Council for approval and comment (December 2022) UPDATE;
- Review materials developed by other designers to ensure consistent standards and approaches which will meet all code requirements (January 2023) UPDATE;
- Provide the City online access to participate in design planning and review meetings;
- Provide initial Site operating results and evaluation for future city and state locations;
- Execute formal startup and a 30-day runtime period for testing and final inspection approval (February 2023) UPDATE; and
- Manage the grand opening of the Site for public introduction (March 2023) UPDATE.

City will perform the following tasks:

- Assist ImaGEN with making formal introductions including state and federal officials;
- The City will either assist ImaGEN in the completion of government-required

documentation to obtain additional funds or financial support and/or will obtain support for the Chamber of Commerce, Office of Economic Development and South Carolina Research Authority as necessary to facilitate proactive participation in the Inflation Reduction Act or other government programs that would assist in the deployment of hydrogen from this fueling station;

- The City will assign a dedicated contact person to facilitate clear and timely communication as might be needed for approvals and joint development work under this SOW;
- The City and its primary contact will work with ImaGEN's project manager to identify priorities, assign tasks and develop work estimates to ensure that all work hours are applied appropriately and that the work is completed on time and in compliance with all applicable laws and regulations;

Assumptions

Below is a list of working assumptions regarding the SOW:

- Neither ImaGEN nor the City will invoice the other party for actual hours as all work will be provided as part of "contributory value" of the project;
- All materials developed under this SOW will be the property of ImaGEN;
- ImaGEN and City will jointly work on obtaining additional non-dilutive or in-kind funds from the State of South Carolina, the federal government or other sources as each party may benefit;

Price and Payment Schedule

The lease will be billed on the date of the lease execution and signing payable by ImaGEN on demand.

All travel, lodging and any mutually agreed upon expenses in conjunction with the project are the responsibility of each party. However, should other government funds or financial assistance become available that provides for cost reimbursement for expenses, then said expenses will be billed to the responsible government entity for reimbursement at contracted rates.

Any sales tax to be calculated from the sale of the hydrogen will be effected as per all local, state and federal requirements.

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "*Lease*") is made, dated and effective as of November __, 2022, by and between ImaGEN Inc., a Delaware corporation (the "Lessee"), and the City of Columbia, a municipal corporation of the State of South Carolina ("Lessor"); and Lessor and Lessee (together, the "Parties" and each a "Party").

WITNESSETH:

WHEREAS, Lessor is the owner of the Property in fee simple absolute as further described hereunder; and

WHEREAS, Lessor and Lessee entered into that certain Letter of Intent (the "LOI") dated as of August 26, 2022; and

WHEREAS, the LOI envisions the development of a Columbia Hydrogen Fueling Station and Center for Transportation and the Environment (the "CTE") to promote and showcase South Carolina's forward-thinking alternative energy program in support of the federal government's clean fuel initiative; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby warrant, covenant, and agree as follows:

1. **Lease.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Lessor, Lessor hereby leases to Lessee and its successors and assigns, and Lessee hereby leases from Lessor, that certain real property located at 335 Richland Street, Columbia, South Carolina 29201, and further identified as Tax Map Number 09006-07-02, along with appurtenant structures and equipment constructed or installed by the Lessor for the purpose of Hydrogen Operations (the "Property") according to the terms and conditions of this Lease.

2. **Purpose of Lease.** Lessee shall have exclusive possession of the Property for the installation and operation of a hydrogen fueling system and hydrogen fueling station, and for related and incidental purposes and activities (collectively, "Hydrogen Operations"), to be conducted in such locations on the Property as Lessee may determine pursuant to the terms hereof, and whether accomplished by Lessee or a third party authorized by Lessee, which include, without limitation:

2.1 Providing and installing a state-of-the-art Tru-H2™ hydrogen generation system and electrolyser and piping it to an existing compressor and storage tubes in anticipation of a fully functional hydrogen demonstration, hydrogen storage, and an active refueling station.

2.2 Lessee shall not do or permit anything to be done in or about the Property nor bring to or keep anything in or on the Property that is not in accordance with the Statement of Work ("SOW"), attached as Exhibit A to this Agreement, the LOI, and this Lease; nor shall Lessee do or permit anything to be done in or about the Property nor bring to or keep anything in or on the Property that in any way interferes with any easements on the Property, including the Lessor's reservation of an easement for a water line extension recorded at book number 1515 page number 191 at the Richland County Register of Deeds.

2.3 Prior to the Delivery Date as established in Section 3.1 below, Lessor, at its sole cost and expense, shall: 1) clear the Property of any debris and overgrown vegetation; 2) inspect or cause the inspection of the Property and existing structures to determine compliance with safe occupancy requirements under the City's building and/or property maintenance codes; and 3) to the extent reasonably possible, provide Lessee with all technical documents in the possession of the City supporting the existing capital equipment on the site.

2.4 Upon the Lessor's completion of its obligation under Section 2.3 herein, Lessee expressly understands, acknowledges and agrees that the delivery and lease of the Property, including structures and equipment located on the Property, shall be made by Lessor to Lessee on an "as is, where is" basis, and "with all faults." Lessee specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning: (a) the Property's topography, soil or geology, or the suitability thereof, for any and all activities and uses which Lessee may elect to conduct thereon, or any improvements Lessee may elect to construct thereon, or any income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; and (b) the absence of any hazardous substances on, in or under the Property or on, in or under any land adjacent to or abutting the Property.

2.5 Lessor retains all ownership interests in the Property, including all fixtures, structures, equipment, infrastructure, appurtenances and personal property ("Assets") existing on or in the Property prior to the Commencement Date.

3. **Term.** The term of this Lease shall be as follows:

3.1 **Commercial Term.** Subject to and upon the conditions set forth herein, the term of this Lease shall commence upon the Commencement Date and shall end five (5) years thereafter (the "Expiration Date"), unless sooner terminated or renewed or extended as may be hereinafter provided (such term, taking into account such sooner termination or renewal or extension, is hereinafter referred to as the "Commercial Term").

3.2 **Commencement Date.** This Lease shall commence on _____ (the "Commencement Date"). Lessor shall use commercially reasonable efforts to cause delivery of the Property to occur by _____ ("Delivery Date"). Promptly following the Commencement Date, Lessor and Lessee shall

enter into a letter agreement confirming the Commencement Date and the Expiration Date, and acknowledging Lessee's acceptance of delivery of the Property. The letter agreement shall be executed and returned to Lessor promptly within five (5) days following Lessee's receipt from Lessor thereof.

3.3 Holding Over. If Lessee remains in possession of the Property after expiration or termination of the Commercial Term, such holdover by Lessee shall be deemed to be on a month-to-month lease terminable by either party upon thirty (30) days prior written notice.

4. Payments.

4.1 Commercial Term Rent. During the Commercial Term, Lessee shall pay to Lessor an annual rental amount (the "Rent") equal to one dollar and 00/100 (\$1.00).

4.2 Payment of Rent. All payments of Rent may be made by check deposited in the United States mail, first-class postage prepaid, addressed to Lessor at Lessor's address for notice purposes set forth in Section 9.1, unless otherwise agreed by the Parties.

4.3 No Representation Regarding Hydrogen Operations. Lessor acknowledges that Lessee has made no representation or warranty as to the likelihood of success for those Hydrogen Operations that will be constructed on the Property, or, if constructed, that it will not be removed from the Property. Further, nothing expressly stated or implied in this Lease or indicated to Lessor shall be construed as requiring Lessee to (i) undertake construction, installation or operation of any Hydrogen Operations on the Property or (ii) cause such Hydrogen Operations to remain on the Property; and the decision whether and to what extent to construct or remove the Hydrogen Operations shall be solely in Lessee's discretion pursuant to the terms and conditions herein.

5. Covenants by Lessee.

5.1 Insurance. Lessee shall obtain, and thereafter keep in force during the term of this Lease, (a) a policy of commercial general liability insurance covering property damage and liability for personal injury or death on or about the Property, with limits in the amount of One Million Dollars (\$1,000,000) per occurrence and in the aggregate, (b) an umbrella or excess liability policy in the amount of Four Million Dollars (\$4,000,000), (c) workers' compensation insurance covering Lessee and its employees for all costs, statutory benefits and liabilities under state Workers' Compensation and Employer's Liability Insurance with limits of Five Hundred Thousand Dollars (\$500,000) per accident or disease, and (d) "All-Risk" property insurance insuring the full replacement cost of value and with no co-insurance covering all personal property and improvements owned by Lessee or leased by Lessee under the terms of this Lease. Lessee shall cause Lessor to be named as an additional insured to all of the insurance policies required, where appropriate, and provide that Lessor shall be given a minimum of thirty (30) days'

written notice by any such insurance company prior to the cancellation, termination or alteration of the terms or limits of such coverage. Lessee shall deliver to the Lessor certificates and evidence of appropriate policy endorsements of the foregoing insurance coverages, and evidence of all renewals or replacements of same not less than thirty (30) days prior to the expiration date of such policies. All such policies may be maintained under a blanket insurance policy of Lessee.

5.2 Lessee's Obligation to Comply with Law. Lessee shall comply in all material respects with all laws, statutes, ordinances, regulations, decrees, orders and decisions of or issued by any governmental authority that are applicable to Lessee's Hydrogen Operations on the Property ("Law" or "Laws"). Lessee shall have the right to contest by legal proceedings (which may be brought in the name(s) of Lessor and/or Lessee where appropriate or required), the validity or applicability of any such Law.

5.3 Removals, Alterations and Additions. Excluding all repairs, non-structural improvements, and installations necessary for the Hydrogen Operations and any alterations or additions solely related to or consisting of Lessee's property, Lessee shall not remove or move any structure, equipment, infrastructure, appurtenances and personal property of the Lessor, nor make any structural alterations or additions to any part of the Property or which affect the exterior of the improvements on the Property, without prior written consent of the Lessor, whose consent shall not be unreasonably delayed or withheld. All such alterations and additions to the Property shall be made in accordance with all applicable laws and shall remain for the benefit of Lessor except for Lessee's Property as provided for in Section 7.2.

5.4 Statement of Work. Lessee shall perform the work described in the attached SOW applicable to Lessee, attached to this Lease as Exhibit A.

5.5 Indemnification. Lessee shall indemnify and hold harmless Lessor from and against any and all claims, judgments, damages, costs, attorney's fees, expenses, and liabilities arising from Lessee's use of the Property, including personal injury and premises liability. Lessee, upon notice from Lessor, shall defend the same at Lessee's expense by counsel satisfactory to Lessor.

6. Lessor's Representations and Warranties. Lessor represents and warrants that, as of the effective date:

6.1 Good Title. Lessor has good title to the Property and premises in fee simple absolute, it has full right, authority and financing to make this Lease and to perform as required under this Lease, and this Lease does not conflict, in any material with any other agreement to which Lessor is bound.

6.2 Lawful Use. The Property is zoned to allow Lessee to use the Property as a matter of right for general office, design, engineering, and testing purposes. Lessee's use of the Property shall not be prevented or materially impaired by any current zoning, building, health, safety, environmental or other governmental law

or regulation, or by any restriction, covenant, lease, or agreement entered into, whether of record or not.

7. Covenants By Lessor.

7.1 **Permitting.** Lessor shall locate and transfer to Lessee any existing permits and other regulatory approvals that are in effect and required to operate hydrogen fueling. Lessor authorizes Lessee to process and obtain any permits, entitlements, approvals, licenses, variances or other rights (including any zoning change, conditional use permit and tax-incentive or tax-abatement program approval) from any governmental authority or other Person in connection with the Hydrogen Operations (each, an “Approval”).

7.2 **Statement of Work.** Lessor shall perform the work described in the attached SOW applicable to Lessor, attached to this Lease as Exhibit A.

7.3 **Ownership of Hydrogen Operations.** Lessor acknowledges and agrees that (i) any materials, personal property, inventory, trade fixtures, and removable equipment and fixtures that Lessee uses to construct, install, develop and maintain the Hydrogen Operations on the Property shall at all times remain the property of Lessee and shall not be deemed to be fixtures of the Property, and (ii) Lessor shall have no ownership, lien, security or other interest (including any lien that might otherwise be implied by law) in any property and/or materials used in the Hydrogen Operations that is constructed, developed, and/or installed on the Property by Lessee under the terms of this Lease, or in any profits or income derived therefrom.

8. Default and Remedies.

8.1 **Default.** If a Party (the “Defaulting Party”) fails to perform its obligations under this Lease in any material respect (an “Event of Default”), then it shall not be in Default if it cures such Event of Default within sixty (60) days after receiving written notice from the other Party (the “Non-Defaulting Party”) stating with particularity the nature and extent of such Event of Default and specifying the method of cure (a “Notice of Default”)

8.2 **Remedies.** Upon a Default (but not sooner), the Non-Defaulting Party shall be entitled to exercise any and all remedies available to it hereunder, at law or in equity. All remedies under this Lease are cumulative and not exclusive, and the use of one or more of them will not exclude any other right or remedy allowed by law.

9. Miscellaneous.

9.1 **Notices.** Any notices, demands, correspondence or other communications required or permitted to be given hereunder (collectively, “Notices”) shall be in writing and shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, or (c) by overnight delivery service, freight prepaid, to the Parties at the following addresses:

If to Lessor: City of Columbia
Attn: _____

Plus copies to: _____
Attn: _____

If to Lessee: ImaGEN Inc.
Attn: Ronald Seftick
541 Main St., Horizons I Suite 114
Columbia, SC 29208

Plus copies to: Nexsen Pruet, LLC
ATTN: Robert D. Coble
1230 Main St., Suite 700
Columbia, SC 29201

Notices delivered by hand shall be deemed received when delivered. Notices sent by certified or registered mail or by overnight delivery service shall be deemed received upon (i) acceptance of delivery by the recipient or (ii) rejection of delivery by the recipient. Each Party may change its address for notice purposes by giving written notice of such change to the other Party in the manner provided.

9.2 Lessee's Right To Terminate. Notwithstanding anything in this Lease to the contrary, Lessee shall have the right to terminate this Lease at any time for any reason in Lessee's sole discretion upon sixty (60) days' written notice to Lessor. Within this 60-day notice period, Lessee shall remove its materials, personal property, inventory, trade fixtures, and removable equipment and fixtures from the Property and vacate the Property in the same condition as it was found on the Delivery Date. Upon any such termination by Lessee, this Lease shall be null and void and the Parties' respective rights and obligations hereunder shall terminate, except for those rights and obligations that survive termination pursuant to the express terms of this Lease. Further, upon termination of this Lease for any reason, upon request by Lessor, Lessee shall execute and deliver a release of all of Lessee's right, title or interest under this Lease.

9.3 Construction. This Lease, including any Exhibits attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned herein, and all prior or contemporaneous agreements, understandings and representations are merged herein and superseded hereby. This Lease sets forth all of the promises, agreements, conditions and understandings between the parties hereto pertaining to the Property and to such other matters as are referred to herein, and there are no promises, agreements, conditions, understandings, warranties or

representations, oral or written, expressed or implied, by or between the parties hereto pertaining thereto other than as herein set forth. This Lease shall not be interpreted as creating any partnership or other relationship between the Parties, other than that of Lessor and Lessee. Any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is hereby waived. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires. The terms "include", "includes" and "including", as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not affect the scope, meaning or intent hereof.

9.4 Severance. Should any provision of this Lease be held to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by such holding.

9.5 Waiver. No waiver by a Party of any term or provision hereof shall be deemed a waiver of any other term or provision, and any waiver of rights hereunder must be in writing to be effective. Without limiting the generality of the foregoing, Lessor's failure to exercise any right or remedy in this Lease shall not be deemed to be a waiver by Lessor of that right or remedy. Lessor can delay in enforcing or abandon the enforcement of a right or remedy without losing that right or remedy.

9.6 Execution. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

9.7 Applicable Law. This Lease shall be governed by and interpreted in accordance with the Laws of the state in which the Property is located.

9.8 Limitation on Liability. Notwithstanding anything in the Lease to the contrary, neither Party shall have any liability to the other Party for any punitive, exemplary, indirect or consequential damages arising out of, or in connection with, this Lease.

9.9 Amendment. This Lease shall not and cannot be modified or amended except by a writing signed by both Parties. Wherever the consent of a Party is required or requested hereunder, such consent shall not be unreasonably withheld, conditioned or delayed (unless the standard is otherwise expressly stated to be a Party's sole discretion).

9.10 Agency. Each of the Persons signing this Lease on behalf of a Party represents and warrants that he/she has the authority to execute this Lease on behalf of the Party for whom he/she is signing.


IN WITNESS WHEREOF, the Parties have executed and delivered this Lease to be effective as of the Commencement Date.

LESSOR:

City of Columbia

APPROVED AS TO FORM




Teresa Wilson, City Manager

Legal Department City of Columbia, SC
12/28/2022

Date: 1/23/2023

LESSEE:

ImaGEN Inc.
a Delaware corporation

By: 

Name: Ronald SPECTOR

Title: CEO

Date: 1/20/2023