

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Adopted November 10, 2020

*Introduced by Jane Kelley
who moved its adoption.*

Seconded by Mike Fitzgerald

**RESOLUTION APPROVING A CERTAIN PROJECT, AS DEFINED HEREIN,
APPOINTING BENJAMIN MOORE & CO., AGENT OF THE AGENCY FOR THE
PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS
DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF
CLOSING DOCUMENTS**

WHEREAS, the Fulton County Industrial Development Agency (the “Agency”) is a body corporate and politic duly organized and existing under Article 18-A of the General Municipal Law of the State of New York, as amended, and Section 895-c of the General Municipal Law, with its principal place of business at 1 East Montgomery Street, Johnstown, New York; and

WHEREAS, Benjamin Moore & Co., a New Jersey corporation, authorized to do business in the State of New York, for itself and/or on behalf of an entity formed or to be formed (the “Company”), has submitted an application (the “Application”) to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Company consisting of: (i) the acquisition of an interest in a certain parcel or parcels of real property located at 161 Union Avenue, City of Johnstown, County of Fulton, State of New York (the “Land”) and referred to as tax map parcel number 174.14-1-8; (ii) the construction of an 120,000+/- square foot addition to the existing facility for manufacturing space and equipment storage (collectively referred to as (the “Facility”)); and (iii) the acquisition and installation therein of certain furnishing and fixtures (the “Equipment” and together with the Land and the Facility, collectively (the “Project Facility”) to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility back to the Company, and (E) the providing of financial assistance to the Company for qualifying portions of the project in the form of sales and use tax exemptions, a mortgage recording tax exemption, if requested, and a partial real property tax abatement consistent with the policies of the Agency, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York and Section 895-c of the General Municipal Law (collectively, the “Act”); and

WHEREAS, under the Act, the Legislature of the State of New York has granted the Agency the power and authority to undertake the Project, as the Act authorizes the Agency to promote, develop, encourage and assists projects such as this Project and to advance job opportunities, health general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Project will require the Agency and the Company to enter into an agreement whereby the Company will acquire, by lease, and construct the Project Facility and the Agency will lease the Project Facility to the Company; and

WHEREAS, the Company will agree to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, a lease agreement (the "Lease Agreement") with respect to the Project, along with certain financing documents, will be executed by and between the Company and the Agency; and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the Project is an action under Article 8 of said law (Article 8 hereinafter being referred to as the "State Environmental Quality Review Act" or "SEQRA") and under 6 NYCRR Part 617, §§ 617.2(b) and 617.3(g); and

WHEREAS, the Company has submitted to the Agency, and the Agency has reviewed information needed to determine whether or not the Project will have a significant impact on the environment; and

WHEREAS, the acquisition, construction and installation of the Project Facility has not been commenced, and the Agency has not yet authorized the Project; and

WHEREAS, the Agency conducted a public hearing on October 27, 2020 pursuant to Article 18-A of the Act before taking official action relating to the Project.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency has reviewed the application to determine compliance with the requirements of the Act and based on the representations of the Company to the Agency in said application and elsewhere, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) The Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a "project", as that quoted term is defined in the Act;

(C) The acquisition, construction and installation of the Facility and the lease of the Facility to the Company (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the State of New York and the County of Fulton, and (ii) will not result in the removal of an industrial or manufacturing plant of the

Company from one area of the State to another area of the State; nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State of New York; and

(D) The location of the site of the Project is acceptable to the Agency;

(E) The Facility is not known by the Agency to be in material violation of the local zoning laws and planning regulations of the City of Johnstown and all regional and local land use plans for the area in which the Facility shall be located;

(F) The Facility and the operations of the Company are not known by the Agency to cause or result in the violation of the health, labor, environmental or other laws of the United States of America, the State of New York, the County of Fulton or the City of Johnstown; and

(G) The Project is a "Type I Action" under SEQRA for which the Fulton County Industrial Development Agency (the "Agency") has acted as lead agency. On or about November 10, 2020, the Agency thoroughly reviewed the Project Site Plan Application to the City of Johnstown, the environmental assessment form submitted on behalf of the Company and the related supporting information presented to the Agency within the Company's Application for Assistance in order to determine whether the Project might have any potential significant adverse impacts upon the environment and issued its Negative Declaration. In doing so, the Agency satisfied the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations and no further SEQRA review is required for the Project; and

(H) The completion of the Project will not result in the removal of a commercial, industrial or manufacturing plant of the Company from one area of the State of New York to another area of the State of New York. Further, the completion of the Project will not result in any loss of jobs and all existing jobs will be retained nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State of New York; and

(I) The Agency further determines that the Project consists of a private investment estimated at \$17,750,000 and the Agency hereby determines this to be a Material Term, as defined in the Agency's Recapture of Benefits Policy, as amended from time to time, for the purposes of monitoring in accordance with the policies and procedures of the Agency; and

(J) Undertaking the Project will lead to the retention of one hundred thirty three (133) full time equivalent job opportunities and the creation of ten (10) full time equivalent job opportunities for the inhabitants of Fulton County and in the State of New York, the Agency hereby determines this to be a Material Term, as defined in the Agency's Recapture of Benefits Policy, as amended from time to time, in its determination to approve the Project and will require the Company to annually report its job numbers as required by law; and

(K) The Agency determines that it is in the public interest for the Agency to undertake the Project on behalf of the Company.

SECTION 2. Description of Project.

(A) enter into, execute and deliver the a lease agreement from the Company to the Agency and the Lease Agreement with the Company for the Project Facility contingent upon the receipt of site plan approval of the City of Johnstown Planning Board and subject to the review and approval of said documents by the Chairman and counsel to the Agency; and

(B) execute and deliver all other certificates and documents subject to the review and approval of said documents by the Chairman and counsel to the Agency.

The Company shall complete the Project by June 30, 2023 (the "Completion Date"). Unless an extension is granted by the Agency, the failure of the Company to complete the Project by the Completion Date shall be considered a "significant change in the use of the facility" as set forth in the Agency's Recapture of Benefits Policy, as amended from time to time.

SECTION 3. Company Appointed Agent of Agency.

(A) The Company is hereby appointed the true and lawful agent of the Agency to:

- (1) construct and install the Project Facility;
- (2) make, execute, acknowledge, and deliver all contracts, orders, receipts, instructions, and writings needed to complete the Project; and
- (3) do all other things requisite and proper for the completion of the Project.

(B) The Company is authorized to proceed with the acquisition, construction and installation of the Project Facility, subject to receiving any and all appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish these goals.

(C) The Company is also authorized to appoint third party agents to undertake the Project and thereby make available to such third party agents an exemption from New York State sales and use taxes in connection with undertaking the Project. This provision is subject to the Company entering into an Agent Agreement with the Agency.

(D) The Agency hereby approves of the execution of an Agent Agreement authorizing exemptions from the sales and use taxes for purchases and rentals related to the undertaking of the project in an amount not to exceed Seven Hundred Twenty Thousand Dollars (\$720,000.00), based on eligible project costs of Nine Million Dollars (\$9,000,000.00), which exemption will expire on June 30, 2023.

(E) The Agency hereby approves of the Agent Agreement, a copy of which is incorporated herein by reference, with the Company which shall be subject to the termination and recapture of benefits policy of the Agency.

SECTION 4. Payment in Lieu of Tax (PILOT) Agreement. The Agency's approval is subject to the Company entering into a PILOT Agreement with the Agency whereby the Company agrees to make payments in lieu of taxes in any given year as if the Company were the owner of the Project and not the Agency. The Agency's approval is also subject to the Company agreeing to the terms of the Agency's Recapture of Benefits Policy. The following PILOT schedule is consistent with the Agency's uniform policy is approved as follows:

The PILOT Agreement shall be for a term of ten (10) years. The PILOT payment schedule shall be as follows:

- Year 1: Base Value plus 50% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 2: Base Value plus 45% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 3: Base Value plus 40% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 4: Base Value plus 35% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 5: Base Value plus 30% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 6: Base Value plus 25% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 7: Base Value plus 20% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 8: Base Value plus 15% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 9: Base Value plus 10% of increased assessed valuation attributable to improvements made to the Project Facility.
- Year 10: Base Value plus 5% of increased assessed valuation attributable to improvements made to the Project Facility.

The Base Value for the City parcel shall be \$3,740,000.00

At all times, including during the term of the PILOT Agreement, the Company shall be responsible for the full payment of water and sewer assessments, as may be applicable and any other special district assessments.

The estimated minimum real property tax benefit during the term of the PILOT Agreement is One Hundred Ninety Thousand Dollars (\$190,000.00).

The substance and form of the Agreement for Payments in Lieu of Taxes is hereby approved, subject to approval as to content by the Chairman and the Agency's counsel.

SECTION 5. Administrative and Legal Fees. The Company will pay all costs incurred by the Agency, including but not limited to attorney's fees, which arise out of Company's Application for Financial Assistance, whether or not such assistance is ultimately issued. Agency's attorney's fees will be calculated at a time rate of \$275.00 per hour for attorney's time and \$105.00 per hour for senior legal assistant's time, plus disbursements. Upon closing of all of the Project documents, the Company will pay to the Agency an administrative fee (the "Administrative Fee") of \$133,125.00 based upon an estimated Project cost of \$17,750,000.00 pursuant to the schedule set forth below and contained within the Company's Application for Financial Assistance:

First \$10 Million of Project Costs:	¾ of 1%
Next \$10 Million of Project Costs:	½ of 1%
Next \$10 Million of Project Costs:	¼ of 1%
Above \$30 Million of Project Costs:	1/8 of 1%.

Following the completion of the Project Facility, the Company shall confirm, in writing, the actual Project cost. In the event that the total Project cost exceeds the estimate provided herein, the Agency may require the payment of the difference that would otherwise be due pursuant to the above-schedule.

SECTION 6. Insurance. The Company shall deliver to the Agency a certificate of insurance, complying with the requirements as required by the Agency, and indicating that:

(a) The Company maintains insurance with respect to the Facility providing the coverage against the risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, and mandated by the Agency, including, but not necessarily limited to the following:

(i) Insurance protecting the interests of the Company and the Agency against loss or damage to the Project Facility by fire, lightning and other casualties normally insured against with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount not less than the total cash replacement value of the Project Facility, as determined by a recognized appraiser or insurer selected by the Company; provided, however, that the Company may, insure all or a portion of the Project Facility under a blanket insurance policy or policies covering not only the Project Facility or portions thereof but other property. The parties agree that for purposes of this Project the Company will be responsible for providing builders risk insurance.

(ii) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Company is required by law to

provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility and for all contractors and subcontracts.

(iii) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the Property of others caused by any accident or occurrence, with a single combined limit of not less than \$2,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000.00 protecting the Company and the Agency against any loss or liability or damage for personal injury, death or Property damage.

(iv) If applicable and if it is determined that the Project Facility is located within an area identified by the Secretary of Housing and Urban Development as having special flood hazards, insurance against loss by floods in an amount not less than \$1,000,000.00 or to the maximum limit of coverage made available, whichever is less.

(v) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

(b) all policies evidencing such insurance,

(i) name the Company and the Agency as insureds, as their interests may appear, and

(ii) provide for at least thirty (30) days' written notice to the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof.

SECTION 7. Authorized Representatives. (A) The Chairman or the Vice Chairman is hereby authorized to execute and deliver any and all documents necessitated by this Resolution. If required, the signature of the Chairman or Vice Chairman shall be attested by the Secretary or Treasurer of the Agency (or Agency Counsel, in the absence of a Secretary/Treasurer) who, if required, shall affix a facsimile of the Agency's seal to documents required to be under seal. (B) On the advice of Counsel to the Agency, the Chairman or Vice Chairman shall make such reasonable changes to the documents as shall be required to promote and protect the Agency's interests with respect to the Project. All such changes shall be made prior to the closing.

SECTION 8. Approval of Company's Financing Documents. The substance and form of the Underlying Lease, the Lease Agreement, Project Agreement, Agent Agreement and accompanying NYS forms, and all other certificates or documents to be delivered or executed and delivered by the Agency (hereinafter collectively referred to as the "Closing Documents") are hereby approved, subject to approval as to content by the Chairman and the Agency's counsel.

SECTION 9. Authorized Representatives. (A) The Chairman or the Chief Executive Officer is hereby authorized to execute and deliver the Closing Documents. If required, the signature of the Chairman or Chief Executive Officer shall be attested by the Secretary or Treasurer of the Agency (or Agency Counsel, in the absence of a Secretary/Treasurer) who, if required, shall affix a facsimile of the Agency's seal to documents required to be under seal. (B) On the advice of Counsel to the Agency, the Chairman or Chief Executive Officer shall make such reasonable changes to the Closing Documents as shall be required to promote and protect the Agency's interests with respect to the Project. All such changes shall be made prior to the closing.

SECTION 10. Document Preparation. Counsel to the Agency is hereby authorized and directed to cooperate with counsel to the Company, as well as all other necessary parties in order to prepare the documents need to undertake the Project and to effectuate the provisions of this Resolution.

SECTION 11. Public Hearing. A public hearing for this Project was duly authorized and held on October 27, 2020 in accordance with the provisions of Article 18-A of the General Municipal Law.

SECTION 12. Further Assurance. The officers, employees and agents of the Agency are hereby authorized and directed to do all acts required by the provisions of the Closing Documents, and to execute and deliver all additional certificates, instruments and documents and to pay all fees, charges and expenses and do all other acts that may be necessary or proper to effectuate the purposes of this resolution. None of the members, officers, directors, employees or agents (except the Company) of the Agency, shall be personally liable under the other Closing Documents. The Chairman of the Agency is authorized to take such further action as shall be necessary to give effect to and implement this resolution.

SECTION 13. Filing of Documents. Originals of all Closing Documents for the Project shall be filed and maintained in the office of the Agency.

SECTION 14. Public Inspection. A copy of this resolution and a copy of the Company's Application for Assistance, together with all other application materials not protected under applicable Freedom of Information Laws, shall be placed on file in the office of the Agency. Such documents shall be available for public inspection during normal business hours.

SECTION 15. Effective Date. This resolution shall take effect immediately.

{Certification and Acknowledgement to Follow}

AYES: 6
NAYS: 0
ABSENT: 1 (Joe Gillis)
ABSTAIN: 0

I, James E. Mraz, Executive Director of the Fulton County Industrial Development Agency, hereby certify that I have compared the foregoing resolution with the original resolution, adopted by the Fulton County Industrial Development Agency, at a duly called and held meeting of said Agency on the 10th day of November, 2020, and the same is a true and correct transcript there from and the whole thereof.

Witness my hand and official seal
This 10th day of November, 2020


James E. Mraz, Executive Director

Acknowledged and Agreed to

By:
Title:
Benjamin Moore & Co.