

**FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

*Adopted June 9, 2020*

*Introduced by Dave D'Amore,  
who moved its adoption.*

*Seconded by Tim Munn*

**RESOLUTION ACCEPTING AN OFFER IN CONNECTION WITH A RECAPTURE  
MATTER BY AND BETWEEN THE AGENCY AND JOHNSTOWN RENEWABLES, LLC**

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

WHEREAS, the Johnstown Renewables, LLC applied to the Agency to undertake an industrial development project (the “Project”) consisting of: (i) the acquisition of an interest in two (2) certain industrial parcels of land located on Enterprise Road, City of Johnstown, County of Fulton, State of New York (the “Land”) and referred to as tax map parcel numbers 174.18-1-17.1 and 174.17-1-7.1; (ii) the construction of a 11,855+/- square foot manufacturing facility for processing acid whey into ethyl alcohol and animal feed stock (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 the Project Facility to the Company, 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, on March 8, 2016, the Agency adopted an inducement resolution appointing Johnstown Renewables, LLC (the “Company”) as agent of the Agency for purposes of undertaking the Project; and

WHEREAS, on August 9, 2016, the Agency adopted a closing resolution authorizing the execution of the closing documents, inclusive of the documents to effectuate the straight lease transaction; and

WHEREAS, the Agency and the Company duly executed closing documents effective March 14, 2017 with respect to the Project; and

WHEREAS, the Company was granted a sales tax exemption in connection with the Project for the time period commencing July 15, 2016 and ending December 31, 2017; and

WHEREAS, in January of 2018, the Agency received communication from the majority member of the Company, CRE Capital, LLC, advising of the passing of Christian Eisenbeiss, the sole member of CRE Capital, LLC and advising that the completion of the Project would be placed on hold; and

WHEREAS, in February of 2018, the Agency sent notice to the Company that it was in

default under the closing documents for failure to complete the Project in the requisite timeframe and in March of 2018, the Company advised that the Project was subject to further delay due to a lawsuit filed against the Company; and

WHEREAS, in May of 2019, the Company requested an extension of the Project completion date through December 31, 2019, which the Agency granted in an effort to enable the Company to complete the Project; and

WHEREAS, in October of 2019, the Agency learned that the Company would not be able to complete the Project and the Company scheduled an auction to liquidate its assets; and

WHEREAS, in January of 2018, by its filing of the ST-340, the Company reported to the Agency use of the sales tax exemption in the amount of \$960,000.00; and

WHEREAS, since the Company would not be completing the Project as originally contemplated, the Agency resolved to terminate the Lease Agreement and Payment in Lieu of Taxes Agreement with the Company and seek recapture of any unauthorized sales tax benefits the Company received; and

WHEREAS, the Agency and Company entered into an Escrow Agreement concerning the recapture of sales tax benefits, whereby the parties agreed that the proceeds from the auction would be held in escrow pending a resolution of the recapture matter; and

WHEREAS, following the conclusion of the auction, the Company filed an amended ST-340 amending its original filing to indicate that \$55,355.52 in sales tax exemptions were taken and also notified the Agency that \$29,882.00 in sales tax was remitted directly to NYS Taxation & Finance from the auction sales; and

WHEREAS, based on the purchases originally made and the sales at auction, as specifically outlined in its letter dated February 27, 2020, the Company offered to remit an additional \$54,650.00 to NYS Taxation & Finance in full satisfaction of the Agency's recapture matter; and

WHEREAS, in March of 2020, the Agency filed a ST-62 with NYS Taxation & Finance detailing the chronology and status of recapture matter; and

WHEREAS, in May of 2020, the Agency sought a formal opinion from NYS Taxation & Finance concerning the recapture matter and the offer made by the Company; and

WHEREAS, NYS Taxation & Finance had an opportunity to review all of the sales tax documents, inclusive of the ST-60, ST-340 and amendments thereto, the letter sent on behalf the Company regarding its offer, the Agency's ST-62 for year ending December 31, 2019, the Escrow Agreement and the Agency's Recapture Policy; and

WHEREAS, on May 29, 2020 via email, a copy of which is attached hereto and incorporated herein by reference, NYS Taxation & Finance, based on its opinion that most of the original purchases were likely subject to an exemption from sales tax due to the manufacturing exemption, as opposed to the Agency's exemption, indicated that the Company's offer to remit an additional \$54,650.00 of sales tax payment to NYS Taxation & Finance was acceptable and acknowledged receipt of the previously remitted sales tax payment in the amount of \$29,882.00.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Based upon the opinion of NYS Taxation & Finance and upon receipt of any all outstanding legal fees and expenses of Agency and full payment for lease termination, as required by the Lease Agreement dated March 14, 2017, from the Company, the Agency hereby accepts the Company's offer to remit an additional \$54,650.00 as a final sales tax payment in full satisfaction of the Agency's recapture efforts relating to the Project.

SECTION 2. Upon receipt of funds from the Company in the amount of \$54,650.00 payable to NYS Taxation & Finance and payment of any and all outstanding legal fees and expenses of the Agency, as required by the Escrow Agreement, the Agency hereby approves of and authorizes the prompt remittance to NYS Tax & Finance along with the filing of ST-65, a copy of which is presented at this meeting.

SECTION 3. The Agency hereby authorizes the Chairman to execute any and all necessary documents to effectuate this resolution.

SECTION 4. This Resolution shall take effect immediately.

Roll Call Vote:

	Aye	Nay	Abstain	Absent
Dave D'Amore	<u>X</u>	___	___	___
Joe Semione	<u>X</u>	___	___	___
Todd Rulison	___	___	___	<u>X</u>
Jane Kelley	<u>X</u>	___	___	___
Mike Fitzgerald	<u>X</u>	___	___	___
Joseph Gillis	___	___	___	<u>X</u>
Tim Munn	<u>X</u>	___	___	___

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 9<sup>th</sup> day of June, 2020, and the same is a true and correct transcript there from and the whole thereof.

Witness my hand and official seal  
this 9<sup>th</sup> day of June 2020.

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James E. Mraz, Executive Director