

**ANNEXATION REVENUE SHARING
AGREEMENT**

BETWEEN

FULTON AND MONTGOMERY COUNTIES

REGARDING

**PROPOSED
REGIONAL BUSINESS PARK SITE**

November, 2015

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ANNEXATION REVENUE SHARING AGREEMENT

THIS ANNEXATION REVENUE SHARING AGREEMENT (“Agreement”) dated November 24, 2015 by and among the COUNTY OF FULTON (“Fulton County”), having an office at the Fulton County Office Building, 223 West Main Street, Johnstown, New York 12095, the COUNTY OF MONTGOMERY (“Montgomery County”), having an office at the County Office Building, Fonda, New York 12068.

W I T N E S S E T H:

WHEREAS, Fulton and Montgomery Counties (hereinafter collectively referred to as “the parties”) recognize the need for increased commercial, manufacturing and industrial property suitable for development; and

WHEREAS, Fulton and Montgomery Counties have jointly pursued preparing a 263+/- acre tract of land comprised of Tax Map Parcel Numbers 19-1-10.2, 19-1-14.11, 20-3-9 and 20-3-3.1 currently situated in the Town of Mohawk, Montgomery County as a shovel-ready site for a major corporation, and

WHEREAS, Fulton and Montgomery Counties desire to cooperate together to ensure that this tract of land is prepared as a shovel-ready site, and

WHEREAS, the site currently does not have access to municipal water and wastewater services, and

WHEREAS, Fulton and Montgomery Counties are working towards the possibility of annexing Tax Map Parcel Numbers 19-1-10.2, 19-1-14.11, 20-3-9 and 20-3-3.1 from Montgomery County to Fulton County; and

WHEREAS, Fulton and Montgomery Counties wish to provide for the sharing of real property tax revenues if annexation does occur.

IT IS THEREFORE AGREED AS FOLLOWS:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

“Agency” means the Fulton County Industrial Development Agency and its successors and assigns.

“Annexed Parcel” means a certain parcel of real estate containing approximately 263 acres comprised of Tax Map Parcel Numbers 19-1-10.2, 19-1-14.11, 20-3-9 and 20-3-3.1 in the Town of Mohawk, Montgomery County, New York, as more particularly described on Exhibit A attached hereto.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Annexed Parcel or any part thereof or the conduct of work on the Annexed Parcel or any part thereof or to the operation, use, manner of use or condition of the Annexed Parcel or any part thereof, including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Annexed Parcel, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Fulton County” means the County of Fulton, New York.

“Governmental Authority” means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

“Johnstown” means the City of Johnstown, New York.

“Montgomery County” means the County of Montgomery, New York.

“Municipalities” means, collectively, Fulton County and Montgomery County.

“Municipality” means, individually, Fulton County and Montgomery County.

“Project” means Regional Business Park Project.

“State” means the State of New York.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1 FULTON COUNTY REPRESENTATIONS AND WARRANTIES.

- A. Fulton County is a municipal corporation validly existing under the Constitution and laws of the State, with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- B. Fulton County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by Fulton County and constitutes the legal, valid and binding obligation of Fulton County, enforceable against Fulton County in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.
- C. Neither the execution nor the delivery by Fulton County of this Agreement nor the performance by Fulton County of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to Fulton County, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which Fulton County is a party or by which Fulton County or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.
- D. No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by Fulton County of this Agreement, except such as have been duly obtained or made.
- E. Fulton County has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by Fulton County of this Agreement and the transactions contemplated hereby.
- F. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending, or, to Fulton County's best knowledge, threatened against Fulton County wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by Fulton County in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by Fulton County of its obligations hereunder or under any such other agreement or instrument.

SECTION 2.2 MONTGOMERY COUNTY REPRESENTATIONS AND WARRANTIES.

- A. Montgomery County is a municipal corporation validly existing under the Constitution and laws of the State, with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- B. Montgomery County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by Montgomery County and constitutes the legal, valid and binding obligation of Montgomery County, enforceable against Montgomery County in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.
- C. Neither the execution nor the delivery by Montgomery County of this Agreement nor the performance by Montgomery County of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to Montgomery County, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which Montgomery County is a party or by which Montgomery County or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.
- D. No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by Montgomery County of this Agreement, except such as have been duly obtained or made.
- E. Montgomery County has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by Montgomery County of this Agreement and the transactions contemplated hereby.
- F. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending, or, to Montgomery County's best knowledge, threatened against Montgomery County wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by Montgomery County in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by Montgomery County of its obligations hereunder or under any such other agreement or instrument.

ARTICLE III

ANNEXATION OF PROJECT PARCELS

SECTION 3.1 BACKGROUND. Fulton and Montgomery Counties hereby agree that:

- A. The Project is a large regional development that will benefit Fulton and Montgomery Counties.
- B. The annexation of the Annexed Parcel into Fulton County and the City of Johnstown could:
 - (1) Ensure that the Project has adequate water and sewer service;
 - (2) Provide for the development of the Annexed Parcel, which currently consists of undeveloped land;
 - (3) Not affect any of the local school districts;
 - (4) Impact the tax revenues of Montgomery County; and
 - (5) Result in the creation of more property suitable for development for commercial, manufacturing and industrial purposes and thereby satisfy the need for such property in Fulton and Montgomery Counties.
- C. Completion of the Project will result in an increase in real property taxes due to an increase in real property assessed value.
- D. Fulton and Montgomery Counties desire to share the County property tax revenues to be generated by Fulton County pursuant to the Project in accordance with the terms set forth in Article IV hereof, and thereby reduce the impact of any loss of real property taxes and other revenues to Montgomery County.
- E. The undertaking of the Project will be consistent with the development of the surrounding area and will be accomplished in compliance with all Applicable Laws.

SECTION 3.2 AGREEMENT. Fulton and Montgomery Counties hereby agree that in return for executing this Annexation Revenue Sharing Agreement, Montgomery County shall not, in any way, hinder the annexation of the Annexed Parcel into Fulton County and the City of Johnstown.

ARTICLE IV

REAL PROPERTY TAX PAYMENTS

SECTION 4.1 COUNTY REAL PROPERTY TAX PAYMENTS.

A. Fulton and Montgomery Counties hereby agree that the County property tax revenue due to Fulton County from the County taxes imposed on the Annexed Parcel and, subject to Section 4.3 hereof, any payment in lieu of tax revenue, shall be allocated as follows:

Fulton County : 50%
Montgomery County : 50%

B. Fulton County shall pay the total amount due to Montgomery County in any fiscal tax year within the period that Fulton County allows payment of taxes levied in such fiscal tax year without penalty. Payment of real property tax revenue to Montgomery County shall be conditioned upon receipt of taxes from the taxpayer.

SECTION 4.2 LATE PAYMENTS.

A. If Fulton County fails to make any payment required by this Agreement when due and such delinquency shall continue Fulton County’s obligation to make the payment so in default shall continue as an obligation to Montgomery County until such payment in default shall have been made in full, and Fulton County shall pay the same to Montgomery County together with a late payment penalty of two percent (2%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month.

SECTION 4.3 PAYMENT IN LIEU OF TAX AGREEMENTS.

A. Fulton and Montgomery Counties recognize that the Agency has the power under Section 874 of the General Municipal Law to enter in payment in lieu of tax agreements (PILOTS) with respect to all or a portion of the Annexed Parcel.

B. Fulton and Montgomery Counties agree and authorize the Agency to enter into the following PILOT with a company with respect to all or a portion of the Annexed Parcel:

Year 1: 50% Exemption
Year 2: 45% Exemption
Year 3: 40% Exemption
Year 4: 35% Exemption
Year 5: 30% Exemption
Year 6: 25% Exemption
Year 7: 20% Exemption
Year 8: 15% Exemption
Year 9: 10% Exemption
Year 10: 5% Exemption
Year 11: 0% Exemption

- C. In the event the Agency desires to enter into a Payment in Lieu of Tax Agreement with a company that would provide additional exemptions above and beyond what is identified in Paragraph B above, the Agency shall first obtain the written consents of both Fulton and Montgomery Counties to the execution and delivery of such PILOT. Any such PILOT entered into without such written consents shall be null and void as a matter of law.

ARTICLE V

EVENTS OF DEFAULT

SECTION 5.1 EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

- A. Failure of Fulton County to pay when due any amount due and payable pursuant to this Agreement and continuance of said failure for a period of fifteen (15) days after written notice to Fulton County stating that such payment is due and payable;
- B. Failure of Fulton and Montgomery Counties to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to such Municipality specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if such Municipality shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as such Municipality shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or
- C. Any warranty, representation or other statement by or on behalf of Fulton and Montgomery Counties contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement and (1) shall be materially adverse to one or all of the other Municipalities at the time when the notice referred to below shall have been given to such Municipality and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of such Municipality, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and such Municipality shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as such Municipality shall require, in the exercise of due diligence, to cure such default.

SECTION 5.2 REMEDIES ON DEULT.

- A. General. Whenever any Event of Default shall have occurred with respect to this Agreement, either Municipality may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the defaulting Municipality under this Agreement.
- B. Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. Each

such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

SECTION 5.3 PAYMENT OF ATTORNEY'S FEES AND EXPENSES.

- A. If any Municipality should default in performing any of its obligations, covenants or agreements under this Agreement and any of the other Municipalities should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of a Municipality herein contained, the defaulting Municipality agrees that it will, on demand therefore, pay to other Municipality or Municipalities, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 5.4 REMEDIES; WAIVER AND NOTICE.

- A. No Remedy Exclusive. No remedy herein conferred upon or reserved to any Municipality is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.
- B. Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.
- C. Notice Not Required. In order to entitle any Municipality to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.
- D. No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1 TERM. The term of this Agreement shall be forty (40) years after this Agreement is executed by both parties. At the end of the forty (40) year term, this Agreement shall be automatically renewed for another 40-year term under the same terms as stipulated in this Agreement.

SECTION 6.2 COST SHARING. Fulton and Montgomery Counties hereby agree to share equally in all costs associated with:

- A. Preparing the Project Site as a shovel-ready site as it relates to environmental and engineering studies and excludes costs associated with capital infrastructure improvements both off-site and on-site. It is understood and agreed that those capital infrastructure costs shall be borne by the company locating on the site or some other entity that Fulton or Montgomery Counties**
- B. Marketing the shovel-ready site.**

SECTION 6.3 AMENDMENTS. This Agreement may not be changed, modified, amended or waived except by written agreement duly authorized and executed by both Fulton and Montgomery Counties.

SECTION 6.4 ASSIGNMENT. Neither this Agreement nor any rights and obligations hereunder may be assigned by any Municipality without the prior written consent of the other Municipalities.

SECTION 6.5 NOTICES. All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and shall be sufficiently given if telecopied, delivered in person, sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight delivery service, addressed as follows:

Fulton County:

County of Fulton
County Office Building
Johnstown, New York 12095
Attention: Chairman, Board of Supervisors

Montgomery County:

County of Montgomery
County Office Building
PO Box 1500
Fonda, New York 12068
Attention: County Executive

SECTION 6.6 ENTIRE AGREEMENT. This Agreement constitutes the entire and complete agreement between the parties with respect to the subject matter hereof, and all previous discussions, understandings, arrangements and correspondence with respect to the subject matter hereof are superseded by the execution of this Agreement.

SECTION 6.7 COUNTERPARTS. This Agreement may be executed in several counterparts, any one of which shall be considered to be an original hereof for all purposes.

SECTION 6.8 SEVERABILITY. In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Municipalities shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof shall not be affected thereby.

SECTION 6.9 GOVERNING LAW. The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the State.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed and delivered by their duly authorized representatives on the day and year first above written.

COUNTY OF FULTON

APPROVED AS TO FORM

BY: _____
RALPH OTTUSO, CHAIRMAN OF THE BOARD

JASON BROTT
COUNTY ATTORNEY

COUNTY OF MONTGOMERY

APPROVED AS TO FORM

BY: _____
MATT OSSENFORT, COUNTY EXECUTIVE

MEGHAN M. MANION
COUNTY ATTORNEY

EXHIBIT A
DESCRIPTION OF THE ANNEXED PARCEL